

NOMINATIONS—ICC

HEARING
BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

J.J. SIMMONS III, PAUL H. LAMBOLEY, AND ANDREW JOHN STRENIO,
JR., TO BE COMMISSIONERS, INTERSTATE COMMERCE COMMISSION

AUGUST 6, 1984

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NOMINATIONS—ICC

MONDAY, AUGUST 6, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC

The committee met, pursuant to notice, at 10:03 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the committee) presiding.

Staff members assigned to this hearing: Marguerite Ayers and Karen Phillips, professional staff members, Pamela Garvie, staff counsel, and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearing will come to order, please. Today we are having a hearing on three nominees for the Interstate Commerce Commission. As the audience is well aware, two of the nominations have been pending for a substantial period of time. The third one was made only recently. The Commission now has four members on it. All four are Republican. The three nominees today are all Democrats.

I think the audience is also aware that under the current law the Commission drops from seven to five at the end of 1985. Now, here I am talking about the numbers, the statute reducing the numbers on the Commission. This is not a situation where everyone who is appointed will simply be able to hold over until a successor is qualified, as is normal with Commissioners.

Two of these positions are simply eliminated at the end—well, I should not say two of these, but two positions on the Commission are eliminated at the end of next year.

Senator Hollings has requested his statement be included in the record.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today the Committee is holding a hearing on three nominees to fill the three Democratic vacancies at the Interstate Commerce Commission. These nominees come at a critical time for the Commission, and for the future of our surface transportation system, and must not be taken lightly. Because of the importance of these nominations, I am interested in hearing more about the qualifications of these nominees to be Interstate Commerce Commissioners; about their insights into the many pending regulatory issues of significance to the future of transportation; and about their attitude toward the positions for which they have been nominated.

In considering these nominees, I want to raise a few issues of particular concern to me. In this era of deregulation, I am concerned that we not lose sight of the important role of independent regulatory agencies. With respect to transportation, the Interstate Commerce Commission continues to have a significant mandate from

Congress under the reform bills passed in the last few years. I do not want the nominees to take lightly, in the name of deregulation, the continuing statutory responsibility of the ICC to strike a balance between those areas where regulation is no longer necessary and those where it is essential to protect the consuming public and ensure the health of the transportation sector. I believe that until Congress takes it away, the Commission does have an important, substantive role, which I want to be assured the nominees are committed to fulfilling. I hope that the nominees have thought carefully about their responsibilities if confirmed.

In this regard, I am also concerned about the attitude of each of the nominees toward the privileged positions for which they have been nominated. Over the last several months, the ICC has received much negative attention both in the press and on the Hill, which has only served to denigrate the agency and call into question whether it can do the important job it has been given. Any nominee to the Commission must have a special commitment to ensuring that the Commission is not paralyzed by a polarization of ideologies or personality differences, and must be committed to fostering a spirit of cooperation, receptivity to all viewpoints, objectivity, and leadership in attaining sensible regulatory solutions to the many difficult issues facing the ICC. Without such a commitment, the ICC only will serve to increase, rather than decrease, the fear and frustration associated with any change in the regulatory environment—fears and frustrations that only will lead to Congressional interference with the work appropriately delegated to an independent agency.

Committee members have submitted various questions relating to regulatory philosophy and the implementation of the various reform measures. While it is understood that some of these questions cannot be fully answered by the nominees, I would hope that the nominees have given serious thought to these questions, which do accurately reflect the concerns that Committee members have about pending ICC matters. I look forward to hearing more on these issues today.

The CHAIRMAN. I see Don Nickles. Don, is Bennett here yet? I do not see Bennett. And is Congressman Synar here?

Senator NICKLES. Yes, he is.

The CHAIRMAN. Why do we not start with you, Don, and the Congressman, to introduce J.J. Simmons. Then after that if Paul Laxalt is here we will have him introduce Paul Lamboley, and if not Howard Cannon said he will do that, and we will go from there.

Don, go right ahead.

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. Thank you very much, Mr. Chairman.

It is a pleasure for me to introduce J.J. "Jake" Simmons to be a Commissioner on the Interstate Commerce Commission. It is a pleasure for many reasons, but probably most of all because he is a personal friend. I have known Jake for several years.

He resides in and calls home Muskogee, OK. He has a distinguished career in the private sector, which means a lot to me and I think to others that like to see people volunteer for government service who have also been a success in the private sector, and Jake has done that. He was vice president of Simmons Royalty Co.

Jake spent 9 years of service with the Interior Department, and also had 12 years as a vice president of Amerada Hess. So he has been a success in the private sector and also has shown his skills and talents in the public sector as well.

As you know, he resigned as a Commissioner of the Interstate Commerce Commission to serve as Under Secretary for the Interior Department. I think he has done an outstanding job there and once again demonstrated that he is a very competent professional.

So I recommend him to you, Mr. Chairman. I have recommended him to this committee before. He has already served as Commissioner for I believe 9 months and did a fine job then. So I recommend Jake Simmons very strongly. I think he will do a good job and be a compliment to this country, and certainly in my opinion to the Interstate Commerce Commission as well.

Mr. Chairman, I appreciate the opportunity to appear before you and am especially grateful that you have allowed us to get right up to the top of the schedule and meet some of the other demands that we have today. Thank you.

The CHAIRMAN. Thank you.

Bennett, go ahead. Then we will take the Congressman.

STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

Senator JOHNSTON. I thank you very much, Mr. Chairman. Mr. Chairman, I have a written statement and I also have a written statement from David Boren, who could not be here. He is not in town.

I count it as a great privilege, Mr. Chairman, to come here and speak for my friend Jake Simmons. I have known him for a long time. He of course used to be with Amerada Hess during those days of the energy crisis when we were looking for all the advice we could get on the crisis of the day. Jake Simmons has been one of the clearer heads on matters of energy, on matters of government relations, that I have known in these years in the Congress.

He is not only a friend in the sense of giving advice and giving counsel, but he is a personal friend and for that reason I am particularly pleased to come here and recommend him in the very strongest way for his appointment to the Interstate Commerce Commission.

[The statement follows:]

STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

Mr. Chairman and members of the Committee, I am very pleased to appear before the Committee today for the purpose of introducing to you J. J. Simmons III of Muskogee, Oklahoma, nominee to the Interstate Commerce Commission.

Mr. Simmons is a 1949 graduate of the St. Louis University School of Geological Engineering. Upon graduation from Engineering School, Mr. Simmons returned to Muskogee, Oklahoma to serve as Vice President and geologist to Simmons Royalty Company.

In 1961, he became a Regional Oil and Gas Mobilization Specialist at the U.S. Department of Interior. While at the Interior Department, Simmons also held such positions as Domestic Petroleum Production Specialist, 1962-1966; Assistant Director of the Office of Oil and Gas, 1966-1968; and Deputy Administrator of the Oil Import Administration, 1968-1969.

In 1970, Simmons served as Vice President of Government Relations at the Amerada Hess Corporation in New York City. In 1982, he returned to the Federal Government where he served as a Commissioner to the Interstate Commerce Commission until 1983. Simmons was appointed to the Department of Interior, again 1983 to serve as Under Secretary for one year.

On February 8, 1984, Simmons was nominated by the President to serve as a Commissioner of the Interstate Commerce Commission. He continues to serve as a member to the Commission and his term expires December 31, 1985.

In addition to Mr. Simmons' outstanding professional government service, he has served as a member to the Board of Trustees to Madonna College in Livonia, Michigan; a recipient of the Alumni Merit Award from St. Louis University and a member of Who's Who in America.

Because of his distinguished career, J. J. Simmons is very well qualified to serve as a Commissioner to the Interstate Commerce Commission and I recommend him very highly. I strongly urge you to approve his nomination.

The CHAIRMAN. Thank you, Bennett.
Congressman.

STATEMENT OF HON. MIKE SYNAR, U.S. REPRESENTATIVE FROM OKLAHOMA

Mr. SYNAR. Thank you, Mr. Chairman.

Let me join with the two Senators in this bipartisan introduction and show of support. I think Don clearly pointed out that, without reservation, the Oklahoma delegation enthusiastically supports Mr. Simmons for this nomination.

I have a personal interest because the Simmons family and the Synar family grew up together in Muskogee, OK, and have done business together for more than 30 years. Not only has the Simmons family been an outstanding family in Muskogee, OK, but also in the State of Oklahoma and this country.

Don Simmons, Jake's brother, lives two doors down from my family and I see him often. I join with Don and Bennett this morning to, in unqualified terms, strongly endorse Jake. His father, Jake Senior, was a National Democratic Committeeman from Oklahoma, and Jake and Don and Jake Senior have impeccable Democratic credentials.

But the thing I have appreciated about Jake throughout the years is the fact that he has brought a bipartisan flavor to the positions he has held in government, and his role not only in Interior, but also in his consulting capacity to this government, has been overwhelmingly helpful in a number of areas, particularly in energy as Bennett pointed out.

So I join with Don from Oklahoma along with David, who could not be here today, and the entire Oklahoma delegation on the House side to strongly encourage your support for Mr. Simmons' appointment.

The CHAIRMAN. Fellows, thank you very much.

I do not yet see Paul Laxalt. Howard, did you want to introduce Paul Lamboley? Senator Cannon said he would be delighted to introduce Paul Lamboley.

STATEMENT OF HOWARD CANNON, FORMER U.S. SENATOR FROM NEVADA

Senator CANNON. Mr. Chairman and members of the committee.

It is a pleasure for me to be here and introduce to the committee Paul Lamboley. I am sure Senator Laxalt will be along very shortly. We both support this nomination. Paul Lamboley I have known for many years. He has been very active in Democratic politics in our State, so his credentials cannot be challenged in that regard. He has been active in the Democratic Party as chairman, as county chairman, and has worked hard in the party circles.

He is a fine young lawyer in Washoe County, Reno, NV, and I am sure would serve very well on this Commission. He has been a nominee, as you know, for several years now, and as a result I am satisfied that his law practice has suffered very badly as a result of

not having the confirmation process go through expeditiously either with a rejection or a confirmation.

But I have no hesitancy in recommending Paul Lamboley, because he is both a fine young lawyer and I think would be a credit to the Commission and also for his Democratic credentials, without hesitation.

And I thank you for asking me to say a good word for him.

The CHAIRMAN. Howard, thank you. It is good to have you back.

I will place in the record statements from Senators Heinz, Mathias, and Bradley on behalf of Andy Strenio.

Now I would call the three nominees to the witness table. We will take them en banc.

Senator PRESSLER. Mr. Chairman, if you please, I have a brief opening statement.

The CHAIRMAN. Oh, excuse me. Thank you. Senator Pressler has an opening statement, gentlemen, before we take your statements.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Thank you, Mr. Chairman. I shall be quite brief.

I have had the privilege of meeting with the three ICC Commissioner nominees earlier this morning to discuss transportation problems in my state. In the wake of various forms of transportation deregulation the role of ICC Commissioners has in many ways become even more important in my own home State of South Dakota. Railroad, truck, and bus deregulation has already had a great impact on my State and, I might add, a negative impact. The results have not been very heartening.

Proponents of deregulation have often painted a very rosy picture at Washington hearings, but I see a much different picture when I return to my home State. At a recent hearing on the impact of truck deregulation held in Sioux Falls, SD, we found that rural areas are paying higher prices for poorer services and that customers have less control over their own inventory.

In the area of railroads we face an especially difficult situation in South Dakota. New abandonment proceedings are filed on almost a monthly basis, and many Midwestern farmers are finding it harder and harder to get their grains to market at competitive prices. In fact, we just began working on another abandonment case, in Eureka, SD, where the railroad has quit hauling on the line even before it filed for abandonment with the ICC—much less waiting for a ruling. It is now close to harvest time and the local economy will be devastated if they cannot move the crops this year. Railroads no longer bother to try to build their market in rural areas. They devote most of their efforts fighting for the richer territories and simply abandoning rural and small town areas.

In light of all this, we seem constantly to have several cases before the ICC that are very important to my home State and other rural areas, which, incidently, would include upstate New York or small cities and rural areas of other predominantly urban States.

For instance, one railroad recently attempted to abandon the only main line railroad in the entire western half of South Dakota.

Abandonment of this 165-mile stretch of railroad would have left us with no service in an area over one-half the size of the entire State and would have killed the economies in the local communities along the line. Fortunately, the ICC agreed that we should maintain this line. If we cannot work something out with the Eureka, South Dakota, railroad case, I will fight that abandonment as well.

We also have unique problems in the trucking industry. This week the ICC will rule on a joint line antitrust immunity for trucking companies, which is also very important in rural areas. In South Dakota that is the only way many shippers survive. I have already testified in person before the Commission on this issue, and it will be decided long before you will be on the board, so I am not trying to influence any of you on those cases this morning. I am simply pointing out how much we in rural areas like South Dakota rely on decisions of regulatory agencies like the ICC.

More of these types of issues will arise in the future and I look forward to working with each of you. That is where I am coming from this morning. I am most interested in and will be judging most closely your sensitivity to rural State problems in the transportation area.

With that, I will conclude my formal remarks so that we can get on with the questions. Thank you, Mr. Chairman.

The CHAIRMAN. Larry, thank you.

I see Paul Laxalt in the audience. Paul, I believe you would like to say a few words about one of the nominees.

STATEMENT OF HON. PAUL LAXALT, U.S. SENATOR FROM NEVADA

Senator LAXALT. Yes, I would, Mr. Chairman.

The CHAIRMAN. Why don't you come up to the witness table right now.

Senator LAXALT. Mr. Chairman and members of the committee:

It is a distinct pleasure to come before you today to introduce Paul H. Lamboley, who happens to be a fellow Nevadan, as the nominee to become a member of the Interstate Commerce Commission. As someone who has followed the activities of the ICC with great interest over the past several years, I have come to appreciate the immense responsibilities and difficult challenges facing the Commission. I think Senator Pressler was speaking to that as I came in.

Given the importance of the ICC's work, it is imperative that we fill the remaining Commission posts with individuals who can bring to the ICC the knowledge and experience required to accomplish the Commission's goals. Paul Lamboley in my opinion is well suited for this critical task. He will bring to the Commission a record of achievement in the fields of law and business that will give him a unique and useful perspective on the issues facing the ICC.

His background includes extensive experience in the areas of labor-management relations, civil and criminal law, and governmental relations. He has handled cases before trial courts, appellate courts, administrative agencies, and governmental bodies at

the local, State, and Federal levels. His professional representation of employees and organizations and industries, such as construction, transportation and mining, have distinguished him as a truly outstanding litigator.

By combining his experience in private and governmental law, he is particularly qualified to provide a valuable contribution to the ICC as it works toward an efficient and substantially deregulated environment. Such an environment is essential to the future of our nation's surface transportation industries and Mr. Lamboley, I am confident, will play an integral role in this process.

Mr. Chairman, distinguished members of the committee, it is with great pride that I now introduce to you Mr. Lamboley. And we wish him well.

The CHAIRMAN. Paul, thank you very much.

Senator LAXALT. I thank you, Mr. Chairman. I thank the members of the committee for their time.

The CHAIRMAN. Gentlemen, I have your biographical sketches and statements for the record.

[The material follows:]

BIOGRAPHICAL SKETCH OF JOSEPH JACOB SIMMONS III

Address: 2736 Unicorn Lane, NW, Washington, DC 20015.

Date and place of birth: March 26, 1925, Muskogee, OK 74401.

Marital status: Married to Bernice Miller Simmons.

Names and ages of children: Maj. Jacob Simmons IV, 36; Mrs. Mary Agnes Bruck, 35; Mrs. Bernice Garza, 32; Ms. Jacolyn Simmons, 29; Ms. Eva Simmons, 23.

Education: Manual Training High School, Muskogee, OK, 1939-42. University of Detroit, Detroit, MI, 1942-44. University of Detroit, Detroit, MI, 1946-47. St. Louis University, St. Louis, MO, 1947-49, B.S. Geol. Engrg.

Employment Record:

1984 to Present—Commissioner-Designate, U.S. Interstate Commerce Commission, Washington, DC.

1983-84—Under Secretary, U.S. Department of the Interior, Washington, DC.

1982-83—Commissioner, U.S. Interstate Commerce Commission, Washington, DC.

1970-82—Vice President, Government Relations, Amerada Hess Corporation, New York, NY.

1969-70—Administrator, Oil Import Administration, U.S. Department of the Interior, Washington, DC.

1968-69—Deputy Administrator, Oil Import Administration, U.S. Department of the Interior, Washington, DC.

1966-68—Assistant Director, Office of Oil & Gas, U.S. Department of the Interior, Washington, DC.

1962-66—Domestic Petroleum Production Specialist, Office of Oil & Gas, U.S. Department of the Interior, Washington, DC.

1961-62—Regional Oil & Gas Representative, Office of Oil & Gas, U.S. Department of the Interior, Battle Creek, MI.

1949-61—Secretary-Treasurer, Geologist, Simmons Royalty Company, Muskogee, OK.

Honors and Awards: Special Act of Service Award, U.S. Department of the Interior, 1963. Outstanding performance Award, U.S. Department of the Interior, 1968. Alumni Merit Award, St. Louis University, St. Louis, Missouri, 1968. Distinguished Service Award, U.S. Department of the Interior, 1970. Public Service Award, American Association. Petroleum Geologists, 1984.

BIOGRAPHICAL SKETCH OF PAUL H. LAMBOLEY

Address: 108 Greenridge Drive (Residence), Reno, NV 89509. 327 S. Arlington Ave. (Office), P.O. Box 169, Reno, NV 89504.

Date and place of birth: July 17, 1940, Milwaukee, WI.

Marital Status: Married to Stephanie J. Lamboley (nee West).

Children: Nicole J. Lamboley (Age 17); Joelle A. Lamboley (Age 14).

Education: Monroe H.S. 1954-58, H.S. Diploma. Univ. of Notre Dame; 1960-62; Bach. Sc. Degree 1962. Univ. of Colorado; 1962. DePaul Univ. Law School; 1963-64. Univ. Wisconsin Law School; 1965-67; Juris Doctor 1967.

Employment record:

1970 to Present: Self-Employed Lawyer, 327 S. Arlington, Reno, NV.
 1969-70—Stewart & Horton, Lawyer, 1 N. Arlington, Reno, NV.
 1968-69—Woodburn, Wedge, Blankey, Folsom & Hug, 1 E. 1st St., Reno, NV.
 1967-68—Nevada Supreme Court, Law Clerk, Supreme Court Bldg., Carson City, NV.
 1965-67—Jurgensmeyer & McQuinn, Law Clerk, Elgin, IL.
 1964-65—St. Edwards H.S., Teacher, Elgin, IL.
 1963-64—Park Elitch Wholesale, Sales, 1717 Acoma, Denver, CO.
 1962-63—Scotch & Sirloin, Bartender, Laffite LeProfile, Bartender, Denver, CO.
 1955-62—Park-time employment, Monroe, WI, Stock Clerk, Construction Worker, Truck Driver, Warehouseman.
 Honors and awards: Law Clerk selection based on academic-personnel record.

BIOGRAPHICAL SKETCH OF ANDREW JOHN STRENIO, JR.

Address: 5525 Lincoln Street, Bethesda, MD.
 Date and place of birth: April 3, 1952, Erie, PA.
 Marital status: Married to Judith Lee Ferington.
 Names and ages of children: Elizabeth Ann Strenio, two.
 Education: Harvard Law School and the Harvard Kennedy School of Government, 1974-1978, J.D. and Master of Public Policy Degree, June 1978; Princeton University, 1970-1974, A.B., June 1974; and Hamden High School, Hamden, CT, 1967-1970, High School Diploma, June 1970.
 Government experience: Attorney and then Assistant Director for Regulatory Evaluation in the Bureau of Consumer Protection, Federal Trade Commission, 1982-Present; Staff Economist and lawyer for the President's Council of Economic Advisers, 1980-1981; Law Clerk Department of Justice, Summer 1976; and Management Analyst, Federal Energy Administration, Summer 1974.
 Honors and awards: Recipient of a Federal Trade Commission Special Award for Excellence (1983); Harvard Law School J.D. conferred cum laude (1978); Named one of two Rhodes Scholarship finalists from Pennsylvania (1974); and Delivered Salutatory for Hamden High School Graduating Class (1970).

The CHAIRMAN. I believe we will take Mr. Simmons first, then Mr. Lamboley, then Mr. Strenio.

STATEMENT OF J.J. SIMMONS III

Mr. SIMMONS. Mr. Chairman, thank you very much. I do not have any formal comments, but I am grateful to the Senate and to the chairman. I am also grateful to Senator Johnston, Senator Nickles and Senator Boren for their statements, and to Congresswoman Synar, and for his comments concerning me.

I would like to express my appreciation to you and to the committee for your consideration of my nomination. I feel fortunate to be before the committee once again this morning as a nominee for a seat on the Interstate Commerce Commission.

Many of my proudest moments in life have come in the Federal service, and I recognize that few persons have had the opportunities for service to their country which have been made available to me. In addition, I have been able to bring the insights of a former small businessman and corporate executive to my earlier government positions. If I am confirmed, I hope to apply the same insights to further service on the Interstate Commerce Commission.

Once again, Mr. Chairman, I thank you for the opportunity to appear before this committee.

The CHAIRMAN. Thank you.

Mr. Lamboley.

STATEMENT OF PAUL H. LAMBOLEY

Mr. LAMBOLEY. Mr. Chairman, thank you. I would like to thank both Senators Laxalt and Cannon for their kind remarks in their introductions.

I, like Mr. Simmons, have no prepared statement. I want to thank the committee for its consideration and will remain available and at its disposal for their consideration of any issues and questions they may address to me.

Thank you, sir.

The CHAIRMAN. Last, we will take Mr. Strenio. And I might say in terms of questioning, we go on a first-come, first-served rule in this committee. Senator Ford will be asking the first questions.

STATEMENT OF ANDREW JOHN STRENIO, JR.

Mr. STRENIO. Mr. Chairman and members of the committee, thank you very much. First I would like to thank Senators Bradley, Mathias, and Heinz for the kind words they have had to say about me in their letters.

Because time is pressing in this hearing, I have just three additional opening points that I would like to make briefly. First, I view the responsibilities of a member of the Interstate Commerce Commission with the utmost seriousness. I can assure you that if confirmed I will fulfill these duties to the best of my ability by examining the issues that come before me fully, fairly, and with an open mind.

Second, if confirmed, I look forward to a close relationship with this committee through the exchange of ideas, information and opinions, all intended to constructively help the ICC in its task of implementing national transportation policy in the public interest.

Third, and finally, I want to thank all of those whose support and confidence in me, both now and throughout my life, are responsible for my appearing before you this morning. To all my family and friends, and in particular to my wife and daughter, whose love and understanding have sustained me, I want to express my deepest thanks.

Mr. Chairman and members of the committee, this completes my prepared statement. I would also be happy to answer your questions at the appropriate time. Thank you.

The CHAIRMAN. Thank you.

Wendell.

Senator FORD. Thank you, Mr. Chairman.

I am delighted to see all of you this morning. I might say that with regard to two of you this is my first opportunity to visit with you. I have known Mr. Simmons for several years now, and my association with him has been excellent. I look forward to continued work and association with him in the future.

I have a couple of questions. I do not know how you will run it at this point, Bob. Will you put us on a time limit?

The CHAIRMAN. I think we will go for 10 minutes instead of 5, and we can keep going until we are finished.

Senator FORD. I might say that at the beginning I have at least a couple of questions from Senator Hollings and Senator Long, which

they have asked that I ask today to get into the record, and at the proper time I would like to do that.

In the answers to the questions that were submitted to the nominees, one thread came through, and I want to put this forward. It does appear—and I read from one of the answers: "It does appear at present that many of the most pressing and most complicated issues are to be found in the rail area." I am eager to explore those issues in the minds of each of you.

We will start with you, Mr. Lamboley, and work to your left. What are the issues in the rail area?

Mr. LAMBOLEY. As I understand it, Senator, there have been several—

The CHAIRMAN. Why do you not pull the microphone right over to you when you are answering, so the people in back can hear.

Mr. LAMBOLEY. Certainly.

As I understand it, Senator, there are several cases now pending before the Commission which deal with cases of coal rates and other ratemaking proceedings. Background recently given to me by the staff of the Commission in preparation for this hearing indicates that the significance of those cases has long-term implications with the balancing of the interests to provide adequate revenues in the rail industry, as well as dealing with the problems of the shippers that may be involved in those circumstances.

It seems to me many of these issues that are pending really call upon the Commission to evaluate for the purpose of their implementation the various and several factors that are set out as Congressional policy in the Staggers Act.

Senator FORD. Thank you.

Mr. Strenio.

Mr. STRENIO. Senator, I think that the fundamental problem that is facing the Commission today is how to reconcile the interests of the captive shippers in the various rail areas with the revenue adequacy needs of the particular railroads. We clearly have a mandate that competition is to be the law of the land wherever that is feasible. The difficulty arises when you have a situation where a shipper may not have any feasible alternative and therefore you do not have a truly competitive situation.

When you run into that sort of situation, the Commission is charged with weighing and taking into account all of the factors concerning protection for the captive shippers, as well as revenue adequacy, in order to come out with a solution that fosters both efficiency and fairness for all of the parties involved.

I understand that the Commission has before it the maximum rate proceeding in the rail area in particular, which has generated a great deal of interest, and rightly so. It is something to which I will give top priority if I am confirmed to the ICC.

Senator FORD. Thank you.

Mr. Simmons.

Mr. SIMMONS. Senator Ford, I do believe that Congress intended for the ICC to balance the revenue needs of the railroads against the needs of protecting the captive shippers. During my former service on the Commission, I endeavored to reach decisions only after full consideration of the legitimate needs of both carriers and shippers. If I am confirmed, I will try to do the same.

Senator FORD. We have talked about captive shippers and all three of you have mentioned that. So, Mr. Lamboley and then the other two witnesses, what is your description of a captive shipper?

Mr. LAMBOLEY. Senator, it impresses me that in the marketplace dynamics there are shippers—

Senator FORD. May I ask, did you say it impresses you or it depresses you?

Mr. LAMBOLEY. Perhaps a combination of both.

Senator FORD. OK.

Mr. LAMBOLEY. I am sure that the interests invariably see those situations. There are, apparently, circumstances in which there are shippers which do not have situations of competitive standing in terms of carrier availability. It strikes me that in those situations the balancing of the rail carrier's interest and the balancing of the shipper's ability to have adequate rates for its shipments are fundamental and considered priorities among the Staggers Act policies.

It would be my purpose and intention as a Commissioner to evaluate each of the cases. I am not sure, Senator, that there is a generalized definition. I think it is going to arise in the context of each of the areas and each of the specific cases that may come before the Commission. In some cases there will clearly be the prospect that the record will evidence a captive shipper situation which will require the attention of the Commission.

Mr. STRENIO. Senator, I would define "captive shipper" as a shipper that is subjected to market dominance by the dominant carrier, someone that has no feasible alternative to using a particular line, where the possibilities for inter- or intramodal competition do not exist, and where the particular prime carrier is not subject to any kinds of restraints by way of product or geographical competition.

Senator FORD. Thank you.

Mr. Simmons.

Mr. SIMMONS. I have found that in my experience previously it is just best not to rely on the canned descriptions. Many times I have tried to put myself into the position of a captive shipper as a person who cannot get his product to the market in any other way. He is captive to whatever transportation system may exist. It's a lack of competition. He doesn't have any other method by which to move his product.

Senator FORD. Is your name pronounced "Stray-nee-oe"?

Mr. STRENIO. It is "Stren-nee-oe".

Senator FORD. We southerners have a hard time with some words, particularly if they have over four letters.

You will find that I do that all the time. I am trying to figure out what I am going to ask you next.

Mr. STRENIO. I may do it when I am trying to figure out how to answer you, Senator.

Senator FORD. You sound like you are coming on pretty good. I like that.

You said product and geographic. What do you mean by "product" and what do you mean by "geography"?

Mr. STRENIO. Senator, what I mean is that there are many factors that you have to take into account in coming to a conclusion, and two of them that I think have at least some bearing in particu-

lar situations would be product or geographic competition. They could serve as some restraint upon the ability of the main carrier that we are concerned about, that is, serve as a restraint upon its ability to sock it to any particular captive shipper.

What that means in basic terms is that if a particular carrier is in a strong situation in one area it may, for lack of anything else, be able to hurt a captive shipper nearby. But if there are other shippers who have access to different rail systems, and who provide the same product and get it to the market, the main rail carrier has to take into account that if they squeeze out that nearby captive shipper it is not going to do them any good because their captive shipper is going to be hurt seriously economically but that same product is going to be getting to the market in other ways. So the railroad at least runs the risk of hurting itself by hurting others.

I think that this is not meant to be a dominant consideration, but where you have the possibility of forms of that competition, if you are going to look at all of the factors that is something that has to be taken into account.

Senator FORD. Am I correct that you look at rates based on if they had competition? Is that not a factor that is considered?

Mr. STRENIO. Yes, that is correct.

Senator FORD. So if we have a captive shipper, then you determine the rates as if there were competition? How would you then determine the competitive rate?

Mr. STRENIO. That is very difficult, and I understand that the Commission's proposal in terms of stand-alone, or I should say stand-alone costs, gets into that.

I am not at this point committed to any particular position on that in terms of what the determination should be or how much weight ought to be given to a particular factor. I think in general you would try to look and see what the situation is for other similar shippers who are similarly situated except for the fact that they do have competition, to see what rate they are faced with.

Senator FORD. Mr. Lamboley, how do you feel about stand-alone?

Mr. LAMBOLEY. Senator, I have some concerns about the stand-alone concept. I think it is new and something that is going to require from myself particular study and a particular amount of time to get into the issue. It seems to me that the struggle with the question is whether or not the stand-alone concept is an adequate approach and a proper approach to the captive shipper rate situation.

There is a case before the Commission dealing with the subject matter and I have to frankly say, Senator, that in trying to plow through some of the initial impact of evaluating a number of these things, it seems to me that that concept and that case will require a considerable amount of my time and attention.

I reserve any further observations and would be happy to report later my impression of the status of that case, as well as the status of the concept in this application to the ratemaking process for captive shipper situations.

Senator FORD. You have been at the Commission now as a staffer for a couple of years, have you?

Mr. LAMBOLEY. No, sir. I have been a practicing lawyer in Reno for the last couple of years, trying to keep my practice together awaiting the confirmation hearings. I have been trying to stay as close as possible to some of the things that are developing, but as you well may suspect, the demands of an active law practice and particularly the time and attention my clients have a right to expect of me have somewhat limited my opportunities to give you definitive answers.

Senator FORD. I apologize. I had understood from earlier talk, and maybe I misunderstood, that you had been up here waiting for 2 years, sort of like the captive shippers waiting on rates.

Mr. LAMBOLEY. I am sensitive to captive shippers. There is a certain captive nominee status.

The CHAIRMAN. Mr. Simmons, you were on the Commission before and quit. How come?

Mr. SIMMONS. Well, that is a very long story, but I will try to capsule it for you, Mr. Chairman. I was very happy to be a member of the Interstate Commerce Commission. I was in the corporate world and I wanted to come back to government because I actually felt as though I actually owed this country something, because I have a wife and five wonderful children who have done well and who are successes. I have traveled just enough all over the world to realize that there is no other place where these successes could have come about.

I wanted to come back to Washington because I enjoyed my Federal service, and I wanted to be in an independent agency. I was nominated by the President to be in the Interstate Commerce Commission. I was very happy there, and I was approached by the then Secretary of the Interior Jim Watt to be his Under Secretary. I have been a friend of Jim's for 15 years, when he was Deputy Under Secretary for Water and Power and I was Oil Import Administrator.

I turned him down twice. He felt as though I had a knowledge of natural resources. On the third time that he approached me he said: If you do not come, well, I feel as though they will appoint somebody who does not have an appreciation for oil, gas and coal leasing, which will probably one day liberate this country as far as our being dependent upon other nations' natural resources.

The President nominated me to be Under Secretary and I served there for a year. But my true love, sir, is to get back to an independent agency where I can think and act objectively.

The CHAIRMAN. So your sole reason for leaving was the blandishments of Secretary Watt?

Mr. SIMMONS. No, sir. To serve my country.

The CHAIRMAN. I mean leaving the Commission. You were serving your country there.

Mr. SIMMONS. Yes, but with my background in natural resources and my having served in the Department of Interior for 10 years, I accepted this responsibility because I thought I knew quite a bit about the subject.

The CHAIRMAN. Let me ask you this question, and the reason I ask—and I will ask the other witnesses the same thing, unless we have simply exhausted ourselves—is that there is a great similarity between the answers that all three of you have submitted.

Did you prepare your answers, Mr. Simmons, or did the Commission prepare them?

Mr. SIMMONS. The Commission did not prepare my answers, sir. I struggled with them.

The CHAIRMAN. So you can stand behind all of them?

Mr. SIMMONS. I hope that I do not get myself into a crack by saying so, but I certainly tried to answer them accordingly.

The CHAIRMAN. All right. Let me ask you something on the national transportation policy. In your response to one of the questions you said that in setting priorities the ICC should be guided—and I am quoting you here—“by the national transportation policy.” As you are well aware, that policy does not set forth one, two, three, four, five, six, seven, in order of priorities.

What do you think the policy is?

Mr. SIMMONS. I think it is a statement, sir, that the U.S. Government has made that it would hope—that the Congress has stated what it would hope that we do as they ask as it relates to transportation in the United States.

The CHAIRMAN. Well, what do you think the policy is that Congress has stated?

Mr. SIMMONS. Well, it is enumerated, sir, in seven different items. It said “to promote safe, adequate, and economical and efficient transportation.” That is what stood out to me.

The CHAIRMAN. That is reasonably broad.

Mr. SIMMONS. Well, I do not question the wisdom of Congress, sir.

The CHAIRMAN. Mr. Simmons, very clearly we delegated great broad power to the Interstate Commerce Commission. You know that and I know that. Now quit fooling me. What do you think the priorities ought to be in the Commission within that policy?

Mr. SIMMONS. Well, I was not trying to kid you, sir.

The CHAIRMAN. Well, to give me that kind of answer is ridiculous. I know what the policy says, and if you are going to quote back that that is the policy and that is the only policy and you have no views on it, that is another matter. Do you have any views?

Mr. SIMMONS. I certainly do.

The CHAIRMAN. Well, let us have them.

Mr. SIMMONS. I respect that policy because it is something that we almost have to deal with daily. Anything we do has to agree with the national transportation policy.

The CHAIRMAN. Well then, give me what you think within the policy ought to be the priorities of the Commission.

Mr. SIMMONS. I think the priorities of the Commission—

The CHAIRMAN. We have cut down their budget significantly and they are not going to be able to do everything they have done before. They are going to have to make some decisions based upon priorities within the broad parameters of that policy.

Mr. SIMMONS. Well, certainly the Staggers Act and other acts that you have given us have pointed us in the direction that you would like us to go as it relates to deregulation. Having been a small businessman myself, I am all in favor of deregulation, because regulation costs money and especially hurts the small businessman.

The CHAIRMAN. Well now, you have mentioned the Staggers Act. In what direction do you think we have pointed the Commission through that act?

Mr. SIMMONS. To eliminate all regulations, sir, that we deem are necessary, and with the help and guidance of Congress in that respect also, because they are a burden.

The CHAIRMAN. I do not understand your answer, but go ahead.

Mr. SIMMONS. Well, certainly the Staggers Act mandated that we consider the revenue needs of the carriers and yet serve the public need.

The CHAIRMAN. I understand that, but what does that tell me?

Mr. SIMMONS. Well, we are talking about efficiency, sir, in the transportation system.

The CHAIRMAN. Now I am asking you about priorities. The Commission is going to have about 15 to 20 percent less budget than it had before. In terms of priorities, what are you going to cut out that they used to do?

Mr. SIMMONS. All unnecessary regulation.

The CHAIRMAN. All unnecessary what?

Mr. SIMMONS. Regulation.

The CHAIRMAN. Which is unnecessary?

Mr. SIMMONS. I would have to study it and I have to get back to you, sir. There are many things pending before the Commission, and some of the cases that were there when I was there before, for instance, and I certainly intend to study them on a case-by-case basis and make objective decisions about them.

The CHAIRMAN. Let me shift to trucking. Here I would just as soon not have any reference to insurance or safety, because almost everyone concedes that any kind of deregulation is not going to omit safety and adequate insurance.

What areas do you see that still need some kind of ICC supervision as far as the trucking industry is concerned?

Mr. SIMMONS. Well, the fitness, sir, is certainly something that I consider.

The CHAIRMAN. Would you define what you mean by "fitness"?

Mr. SIMMONS. Well, in some of the cases that we had before us there were persons who came and just said that they were actually fit, but some of those persons did not have any respect for the laws and the regulations as stipulated by the ICC, and flagrantly did not even want to have certification. In those particular cases I voted against them, sir.

The CHAIRMAN. Well, I am not asking about the past. I am talking about the future now. Assuming that you are going to require adequate insurance, assuming that you are going to require adequate safety, what other areas prospectively do you see in the trucking industry that need ICC regulation?

Mr. SIMMONS. Well, I certainly would be in favor of minimizing all of the unnecessary regulations that might exist there. I am well aware that you have introduced a bill, sir, back in November of last year to eliminate all economic regulation as it relates to trucking.

The CHAIRMAN. Let me rephrase my question. What do you think are remaining necessary regulations, if we are going to get rid of the unnecessary ones?

Mr. SIMMONS. I will certainly have to give it my considered study when I return, sir.

The CHAIRMAN. Let me ask you about your response to one question specifically and then I will come back again on my next round. We all view commissions differently, perhaps depending upon how they affect us in our States. By and large, Oregon has had good reaction to truck deregulation and reasonably good reaction to airline deregulation. But I am starting to get some complaints about rail rates. It is the first time shippers, of all the areas, that shippers or passengers have complained.

We are also aware that most commissions are dominated by the chair, or usually they are.

Mr. SIMMONS. Dominated by what?

The CHAIRMAN. Dominated by the chair. By and large, the chair picks the staff, the chair sets the agenda. If it is a strong chair, the chair usually dominates the commission.

There has been more than the usual amount of friction on the ICC, private and public. It has been slightly different than most other commissions. For purposes of the prehearing questions I checked your record in terms of your votes with Chairman Taylor when you were there before, and I asked how you accounted for that. I was almost stunned by your answer, in which you said such a comparison was a classic example of a racist remark or a stereotypical conclusion.

Mr. SIMMONS. By the media, sir, not by you.

The CHAIRMAN. Well, I am quoting you: "Why should the one black member be accused of following the Chairman's lead?" In my asking the question I had no thought as to race on it, and I am curious where the media has classified your following the Chairman as racist.

Mr. SIMMONS. You said it had been reported, sir, in your question, and that is why I answered it, as it related to the media.

I feel as though—or I know that I voted objectively. There was no collusion at all between me and Chairman Taylor. I voted by notation, without any conference with him at all on anything.

The CHAIRMAN. Could I draw any conclusions from the fact that, during your tenure, of the 60 votes taken where the Commission did not have a unanimous opinion, you voted with the chairman 80 percent of the time? Can I conclude from that that your philosophy may be similar to his?

Mr. SIMMONS. I would think maybe the Chairman might have voted with me.

The CHAIRMAN. All right. Then can I conclude that if the Chairman voted with you, you would assume his philosophy is similar to yours?

Mr. SIMMONS. I examined each case on a case-by-case basis, and I certainly did not think or care what the Chairman was doing.

The CHAIRMAN. Larry.

Senator PRESSLER. Thank you, Mr. Chairman.

I would like to ask each of you to respond as specifically as you can. As you know, I am very concerned about the rural small town issue as it relates to the various modes of transportation, almost I suppose to the point of tediousness to my colleagues. But it is something that is very important in my State and parts of almost every

State I believe, so I think it is an issue that needs to be championed.

Let me begin with a question to each of you. As specifically as you can, in terms of rural and small town areas, as things are now evolving describe to me what you think a common carrier's responsibility is? We can start with Mr. Lamboley or any one of you. I would just like to hear specifically how you feel about that.

Mr. LAMBOLEY. Senator, as you may recall, in our meeting occurred earlier this morning I indicated that I grew up in the Midwest in a small southern Wisconsin farming area. I have spent many of my summers on the farms in that area and have a sensitivity for the difficulty that small communities may have in connection with service and levels of service and the ability to have access to carriers.

Congress has not as yet, as I understand the policy, removed the common carrier obligation. It is suggested that there is still some interest in having common carrier responsibilities—I am sure it is true of those who are the consumers and those who are shippers, who make up the fabric of mid-America—to have access to carriers and shipments at reasonable rates and an opportunity to have those reasonable rates reflected in their products, both that which they purchase as well as that which they submit in the open market as their work product.

To that extent, Senator, I would be sensitive as a Commissioner that the accessibility of shippers, to competitive transportation systems, does exist and does exist in areas that would be very reflective, I think, of the mid-America heartland.

Senator PRESSLER. Thank you.

Mr. Strenio.

Mr. STRENIO. Senator, I am very sensitive to the issue of access to service for small communities. As all of us are, I am a product of my experiences, and I have been depending for a number of years upon public transportation in one form or another. So I have a sense of what it is like if people are left with no recourse and what it is like if a common carrier obligation is not being lived up to. I think that is something where it is important that the ICC do the very best it can to make sure that common carrier obligations are observed and respected.

Let me just mention one other thing in regard to that. Whether my experience has come from downstate Illinois where I was a teenager or from other areas, it has been my experience that where the possibility for competition from a private carrier or many private carriers exists, that redounds to the advantage of all consumers who are looking for that service.

It is my understanding that it is the intent of Congress in the national transportation policy to facilitate competition as much as it possibly can. It would be good if we can get into a situation where the private sector wants to provide these services in preference to people being forced to rely solely upon an unwilling carrier since sometimes they do not do what they ought to do.

So if we can foster competition I think that is good, but where it is not working for the members of the small communities I think the common carrier obligation is important. I am sensitive to it; it must and will be followed.

Mr. SIMMONS. Senator, my first exposure to the common carrier was certainly in the area of oil pipelines, and certainly any product that any producer wanted to sell was supposed to be carried just as well as the production of the owner of the pipeline and at rates just as reasonable as if he owned the pipeline himself.

I feel the same way as it relates to transportation of people or commodities, too, that there should be a democratic reasonableness of the common carrier. He should accept the product and carry it just as if it were his own, even if it did not belong to him, and the same way and it relates to people or commodities.

Senator PRESSLER. Now, for example, do you each think we have gone too far with deregulation?

Mr. SIMMONS. I think we should be sensitive to and should always strive to deregulate as much as we can, without hurting, while balancing the public need for the particular service.

Senator PRESSLER. Well, that is true, but do you think we have gone too far in terms of damage to rural and small town and small city areas?

Mr. SIMMONS. I come from a small town of 50,000 people, and we have certainly been hurt by airline deregulation. We do not have the service. But nevertheless, the airlines must be entitled to make a profit, and so there are airlines now with smaller planes which give the service. We have to adjust and we should be given time to do so.

Whenever there is any economic change in the marketplace, somebody is going to get hurt.

Senator PRESSLER. Do either of you have anything to add to that, your views on how deregulation has affected rural areas? May I get a response from each of you, please.

Mr. STRENIO. Senator, that is a very broad question. The best answer that I can give you is that you have to look at the particular form of transportation and the particular communities involved to come up with an assessment of where it is working and where it is not working.

I think in general—and I stress “in general”—that in the rail area we seem to be observing more possible problems, certainly more in the way of complaints from affected shippers. I think that that has to be the first area of involvement in terms of looking to see what is actually happening out there, and if there is a generic problem seeing what we can do to address it.

As far as trucking and the bus areas, while the national experiment in this area is still very new, the kinds and numbers of problems that may crop up in the rail area do not seem to have been overall raising themselves here. My understanding is that both in the trucking and bus areas we have in general much more in the way of companies coming in and wanting to start service than in the way of exiting, which is not to say that we ought not to give a serious examination to this to see where the people are who are losing service, to see if they are being provided with alternatives.

Senator PRESSLER. Well, let me rephrase my question with a hypothetical, because I am getting some very general answers, and of course my questions were general. Let us say that a particular railroad or other company is clearly losing money in one location and

more than making up the difference from its operating authority in other areas.

Could you foresee yourself requiring such an operator to continue operating in the area that is losing his company money?

Mr. STRENIO. Senator, it is my understanding that the ICC has the authority to do that. Whether it would be justified in a particular case, I would need to look at all the factors in terms of—

Senator PRESSLER. I am sorry, I cannot quite hear you.

Mr. STRENIO. I would need to look at all the factors.

Senator PRESSLER. But there would be some cases where you would support retention of a service even if it meant that the company would be losing money in that area in that service?

Mr. STRENIO. I think under certain circumstances that is foreseeable, and I would have an open mind to that.

Senator PRESSLER. If it is in the public interest?

Mr. STRENIO. Yes.

Mr. LAMBOLEY. Senator, I have not formed any particular conclusions with respect to your first question, about the extent to which deregulation has occurred. It seems to me that since 1980, in the early parts of this decade, we have been undertaking to effect congressional action in a number of industries in transportation and have not, perhaps, had adequate time to assess all of the impact.

One of the functions, it seems to me, of the Commission in the course of implementing congressional policy is to exercise some ability in oversight and factfinding to determine the nature and the extent of the effect, whether the intended has in fact been reality, and if not what corrective actions, if any, may be necessary.

After all, when we talk about the marketplace, the marketplace it seems to me has many locations and many dimensions, and a marketplace in one area is not perhaps necessarily the marketplace in another area. And as a Commissioner, Senator, I would assure you that those evaluations in my judgment would be made to determine how well we are functioning with the acts that have recently been adopted.

I would like to see the study reports that still are in existence and being concluded, as a matter of fact. Not all the assessments perhaps are in concerning in the various areas of motor, rail, bus, and household goods transportation. There are still some issues to evaluate and make determinations, and it would seem to me that that is clearly a good place for the Commission to operate in general terms.

Senator PRESSLER. Mr. Chairman, let me conclude, if I may, with a comment, and I will submit the rest of my questions in writing.

Our national transportation system of railroads, trucks, and buses in my view was built up with the common carrier responsibility, where if companies got some rich routes they would get some poor ones, and it built us a national system of roads and transportation, and we are sort of abandoning that.

It has been one of my causes to slow that down a bit, because I think it is in our national economic interest and national defense interest to have a national system of transportation. If we abandon it we are going to find ourselves at a great disadvantage.

I hope that if you are on the Commission, that you will keep those words in mind.

The CHAIRMAN. Thank you.
Wendell.

Senator FORD. Thank you, Mr. Chairman.

Gentlemen, I have a question to be submitted to all three. Does it appear to you that the major coal-hauling railroads are financially unhealthy? Yes or no, and explain.

Basically, all three of you gave the impression that it does not appear that the railroads are unhealthy at the moment, but then you hedged that, and said that one should look at long term and capital replacement and the ability to attract capital. But I notice that some of the railroads are getting into the airline business and buying more stock and becoming large parts of that, and that even one of the major railroads has just purchased a major operation in my hometown.

So it appears that they are not just staying in the railroad business.

Mr. Lamboley, we will start with you. Do each of you feel that you have the correct procedure in determining adequate revenue when you just zero in, maybe, on railroads instead of looking at the whole package? Is the procedure correct or is it antiquated?

Mr. LAMBOLEY. I cannot comfortably speak to the present procedure, Senator, but I can say this. I think the determinations of adequacy and, to respond to the question, health, financial health, I think there are a large number of factors that go into the assessment of the financial health and the adequacy of revenue of a given carrier.

It seems to me that we can talk in terms of a general industry term, but I think the cases are going to come to us, Senator, in terms of particularized situations involving particularized carriers.

I think those carriers will probably expect to be providing financial information regarding a variety of factors that go into the makeup of an assessment, a financial evaluation. I would generally think that there would be a combination of a number of factors that the Commission would evaluate to determine financial health of a given carrier in a given case.

Senator FORD. Are you saying, then, that in your opinion you would change the procedure of determining adequate revenue?

Mr. LAMBOLEY. No, sir; I am not saying that.

Senator FORD. You are saying, though, that it is going to stay on the same track?

Mr. LAMBOLEY. I am not saying that either. But I said, by starting out, Senator, that I was probably giving you what a lawyer gives as a witness answer.

Senator FORD. You said nothing but told the truth.

Mr. LAMBOLEY. It is probably not fair, but the most comfortable thing I can say at this juncture is that I am not satisfied that there are not added dimensions to the approach. But frankly, Senator, I would like to be able to evaluate a given carrier in a given case with the given questions, and to determine whether or not there is more. If there is more, those questions will be asked, and hopefully the answers will be provided.

But it would be my sense to take a broad, a fairly broad look at a given case in terms of financial factors in the assessment of a financial condition of any carrier.

Senator FORD. Thank you.

Mr. Strenio.

Mr. STRENIO. Senator, I also believe that it is important that you look at the specifics of any particular case that comes up in terms of a particular rail company. In terms of the general question of whether the Commission is following the correct procedure with the single indicator, rather than the use of multiple factors, I honestly don't know. I can tell you that I am determined to explore that very vigorously upon my arrival.

The questions in terms of the accounting procedure are incredibly complex, but the policy implications and the results in terms of how particular carriers are regulated are very important. So I do not have a clear answer for you, other than that I am aware that it is important, and I will devote to it a substantial portion of my time upon arrival.

Senator FORD. Thank you.

Mr. Simmons.

Mr. SIMMONS. Senator, I am aware of the revenue adequacy's single financial indicator, and it never came up during my prior term. However, I did vote to issue a notice as it relates to revenue adequacy.

It contained various proposed changes in the methodology for a return on investment. Comments have been received by the Commission, if my memory serves me. I have asked a staffer if they have been received, but there has been no decision. I will certainly devote my time and effort toward this all-important issue.

Senator FORD. All three of you answered this part basically the same. Revenue inadequacy on the Commission's current standard and the term "unhealthy" are not necessarily synonymous. All three of you said that. So maybe all three of you have linked it in the same way. I'm not sure it is the right link, but we will get to that later.

Mr. Simmons, I will start with you now and work the other way. You state your belief that the Commissioners have carried out the intent of the Staggers Act, although you might disagree with some of their decisions. Could you elaborate on some of the areas where you disagree with the Commission's decisions?

Mr. SIMMONS. Well, I disagreed with the Commission's decision on boxcar exemption. Are you speaking about specific cases, sir?

Senator FORD. Yes, sir; or broad, I don't care. I asked you the question; you have to answer it in your good way, my friend.

Mr. SIMMONS. The Commission also voted to eliminate rates as they relate to hauling coal for export. I voted against that, sir. Those are the two that come to my mind immediately.

Senator FORD. Well, that last one was an awful good answer for me, Mr. Chairman.

Mr. SIMMONS. But it got me in trouble there.

Senator FORD. Oh, well, he is smiling. It's all going to be all right.

Mr. Strenio, I am getting worse with your name all the time; I am sorry. Do you have a first name?

Mr. STRENIO. I go by Andy, Senator.

Senator FORD. Andy. Oh, boy. Good.

The CHAIRMAN. That is only four letters.

Senator FORD. Well, I got it now, Senator. You be Frank and I'll be Ernest.

You indicate in your answers that the Federal Trade Commission of the ICC have different regulatory responsibilities, and thus that positions for which you are responsible at the FTC will not dictate your position or positions at the ICC, if confirmed as a Commissioner.

Can you elaborate on how you see the ICC's responsibilities as compared to those of the FTC?

Mr. STRENIO. Certainly, Senator.

First, let me just note that as far as my responsibility for the FTC filings, that I am in a career civil servant position, and not one of the Commissioners at the FTC. All of the filings that have come through my shop have been subject to review by all three Bureau Directors and the entire Commission.

So there are a few other people over there who have had the actual decisionmaking vote.

Senator FORD. Are you trying to indicate that that is one Commission the staff does not run?

Mr. STRENIO. That has been my impression, Senator.

Senator FORD. OK.

Mr. STRENIO. As to the differences, I think that in general, the Federal Trade Commission, and properly so, focuses its attention on concerns having to deal with consumer protection and consumer welfare, and also with enforcement of antitrust responsibilities and promotion of competition.

I think that is the perspective from which the Federal Trade Commission comments flow.

As far as the Interstate Commerce Commission, I think that properly before the Interstate Commerce Commissioners are a much broader array of factors that Congress has placed on their desks for resolution. That includes looking after the economic well-being of carriers and shippers alike in the interest of the American public.

The specific requirements that must be taken into account in reaching various determinations, including energy considerations and the Long-Cannon factors, I think, all reinforce the point that the role of an ICC Commissioner should encompass a great variety of concerns that are not just the kind of concerns that have been concentrated upon in the Federal Trade Commission comments.

Senator FORD. Thank you.

The CHAIRMAN. Larry, did you have any further questions?

Senator PRESSLER. We have some written questions, Mr. Chairman, and I will be submitting those later on.

I must explain that I have to go now to meet with some captive shippers, so I will leave the captive Commissioners.

The CHAIRMAN. Thank you, Larry.

Mr. Lamboley, let me ask you some questions on trucking specifically.

If we move further down the road of trucking deregulation, do you see any need for labor protection similar to some other, on occasion, labor protection provisions that we have passed in other transportation industries?

Mr. LAMBOLEY. Senator, I think that the congressional policies that are developed in the course of hearings and the fact-finding process which Congress undertakes, if there is further congressional action, I am relatively assured that Congress will no doubt have some presentations made to it with respect to impact in employment opportunities. And, no doubt, Congress will evaluate those and put those into the equation to determine whether or not there ought to be, and if so, to what extent any labor protection provisions added to further motor carrier deregulation in the course of congressional declaration of policy.

The CHAIRMAN. What would be your personal recommendation?

Mr. LAMBOLEY. Well, Senator, I'm not exactly sure in which direction the further deregulation is going to go from a congressional policy standpoint.

I think it is one of the situations concern which there is a degree of concern—I am not prepared to give any specific recommendations at this juncture—I think it is appropriate to be sensitive to the employment opportunities, and when we go through periods following changes in congressional policies and in the early part of this decade, in the 1980's, when we have dealt with changes in transportation legislation, change in the national transportation policy, that not only are we talking about the factors that relate to consumers, shippers, carriers, but also the employees who may work for the various components or be involved in employment opportunities.

And it just strikes me that in the transition years, there is going to be—and to some extent I suspect has been—dislocation of employees. Whether we can provide, by virtue of increased competition, whether the increased competition has picked up in other areas, perhaps with other modes or otherwise, the employment opportunities that have been lost in one area and have been resurrected or otherwise been created in other areas, would be appropriate.

Right now, Senator, I cannot tell you whether or not there has been, from any study, there has been an evaluation of to what extent deregulatory changes have produced unemployment in one area, and to what extent have they been offset by the competitive changes that have been sought in the policy and affected by the policy.

The CHAIRMAN. Frankly, what I am trying to find out, both in your answers and Mr. Simmons' answers, they were much more generic than Mr. Strenio's. It isn't so hard to follow his philosophy from the answers. But with both you and Mr. Simmons, it is a fall-back on the national transportation policy and the ICC, of course, will carry out the will of Congress and the law of Congress. I expect they would. I don't think anybody is going to come up here and say we are not going to pay any attention to the law of Congress.

But there are broad, broad discretionary authorities in most of the congressional delegations to independent Commissions, and most of those broad delegations have been upheld constitutionally, and the Commission has a lot of leeway as to what they want to do.

Let me try on trucking again. Do you see any need for any—and this is prospectively—any need for any standards of entry into the trucking business, other than safety and insurance?

Mr. LAMBOLEY. Senator, unfortunately I am going to retreat to what Congress has said. I am here as a prospective Commissioner on an independent Commission which does not have the broad legislative prerogatives that the Congress has, and I think our roles are significantly different in some areas, and that our areas of implementation of congressional policy, our responsibilities for monitoring factfinding and some oversight includes some recommendations back to this body—that being Congress—for the purpose of declaring policy.

And it seems to me that at this juncture, we have statutory framework within which Congress has indicated what the standard for entry is, and that the entry standards have been designed with the clear intention of easing entry, facilitating entry, and encouraging and stimulating entry into the trucking business.

And I would suspect that that has been the case. It seems to me that the staff has provided me with some statistical demonstrations at the Commission that that, in fact, has been the case.

The CHAIRMAN. Do you think that has been good?

Mr. LAMBOLEY. Yes, sir. I think economic opportunities are good.

The CHAIRMAN. But you think the eased entry has been good?

Mr. LAMBOLEY. Yes, sir.

The CHAIRMAN. All right. Now, I want to rephrase my question again. I think under the Motor Carrier Act as we passed it, I think the Commission could probably deregulate everything but safety and insurance and be upheld legally. I think they could.

But if the Commission could not, do you think the law should be changed? What would your recommendation be as to whether or not any standards other than safety and insurance should be required for entry?

Mr. LAMBOLEY. Senator, frankly I am not prepared to tell you right now that there ought to be congressional changes of policy and what recommendations specifically I would have in connection with that to change entry standards and consider only the safety and insurance responsibility factors.

It seems to me that the ease of entry has been working under the existing criteria established by Congress, and it seems to me that the Commission's implementation has tracked that, and it seems to me that the results have been fairly evaluated and there have been circumstances which clearly evidence the increased competition in the trucking industry and complete increased participation of carrier rights and activities.

And it seems to me that that has been a positive desired and intended influence that the congressional legislation has directed.

The CHAIRMAN. Mr. Strenio, let me shift to you. The Federal Trade Commission has come and testified numerous times before the Motor Carrier Rate-making Commission in here about their views on further trucking deregulation.

I do not know if that was one of the drafts or the papers you may have worked on or not, but give me your best judgment as to whether there is any further need for regulation of the trucking industry, other than for safety and insurance.

Mr. STRENIO. Senator, my general thought is that the ICC ought not to be regulating unless there is a clear need for it, unless there are particular areas of concern that need to have an exemption carved out.

I have an open mind as to whether there are particular questions or concerns that might arise and necessitate something more than the safety and insurance standard. I am openminded about that, and if someone presents arguments or evidence to me about that, I would certainly give it serious consideration.

At this point, to the best of my knowledge, I am not familiar with material that presents such a compelling case.

The CHAIRMAN. You are not familiar with what?

Mr. STRENIO. I am not familiar with material that presents a compelling case that you ought to go ahead and have stronger restrictions than those that you have indicated.

The CHAIRMAN. Mr. Simmons, could you direct yourself to the same question?

Mr. SIMMONS. Yes, sir. I would certainly be in favor of eliminating all regulation that is possible. And as far as insurance and safety, certainly, I have conferred with staff as it relates to the question, and I can see as it relates to owner-operators and dealing with carriers, that you would want to be sure to ensure a fair and competitive market.

I would certainly be in favor of eliminating every bit of the regulation that we could, sir. I certainly do not want to encumber the trucking industry.

The CHAIRMAN. You have been on the Commission before, and you have more experience in this area than Mr. Strenio. He says he will keep an open mind on this, but that he has not seen any compelling facts that would require regulatory standards other than insurance and safety.

Have you?

Mr. SIMMONS. Well, sir, as you evaluate those cases every day—and there were usually about 10 or 12 a day when I was there, 10 to 15, sometimes more—you do it under the regulations that we have. And I realize that we constantly should be looking for things to further deregulate, and I promise you that I will.

The CHAIRMAN. Well, what I want is your advice on the law. Assuming that the law still imposes some barriers other than safety and insurance, should the law be changed so that those are the only barriers?

Mr. SIMMONS. I do not really know.

The CHAIRMAN. Wendell.

Senator FORD. Mr. Chairman, I have basically one more question, and then a couple of questions from Senators Hollings and Exon for the record. And I think that will basically complete any questions that I have for the nominees.

Mr. Lamboley, we will get to you first. In your answers from the Democratic committee members, since you are a Democrat, as I understand it—in fact, all three of you are—aren't all three of them?

The CHAIRMAN. Absolutely.

Senator FORD. Absolutely? You guarantee it?

The CHAIRMAN. Uh—absolutely.

Senator FORD. Well, I am sure of some, but I am not sure of all.

Mr. Lamboley, you represented your view that there are regulations which are necessary and appropriate to ensure, among other things, access—and I like this word—fairness. Do you feel that certain groups have been denied access or have suffered unfairly as a result of the recently-passed reform measures?

Mr. LAMBOLEY. Senator, in recognizing that there are reform measures in several industries, I think there may be people and circumstances in possibly more than one industry, but it appears clear that the rail industry has presented situations which suggest, at least if some of the more widely publicized comments and indeed some of the questions would suggest from members of this committee, that there are concerns for the fairness of the implementation of the Staggers Act and its impact on people other than the carriers, and other than the considerations of adequate revenue for the carriers.

The question of ability of shippers to participate in the marketplace, as well as consumers to participate in the marketplace have been suggested. I think many of those considerations merit serious attention.

And as a commissioner, it would be my intention to devote time and energy to study those, and I understand there are several cases. One of the advantages of having at least the staff inform you about what is pending so, you can at least come here with some understanding that there are currently cases pending before the Commission in which we all—at least some of us, then, to be confirmed—we would have to participate in.

And for my part, I am a bit uncomfortable in getting the situations where I might be indicating a prejudgment or a predisposition, because frankly, Senator, on some of those issues I have no prejudgment; I have no predisposition; but I have a very active sense of inquiry and concern about the issues that the staff informs are raised by the questions presented in those cases. And I would like an opportunity to deal with those.

Senator FORD. Well, of course, there is the attitude of those who would have some jurisdiction over the appointees, that you are all deregulators, and as far as you can go. Otherwise, if you were not a strong advocate of deregulation, you would not be sitting at the table.

I was somewhat pleased to read your statement, which is that you think there should be regulation, that some ought to be kept to assure access and fairness. So you are not for giving up all of the regulations and cutting it to the bare bone, apparently.

Mr. LAMBOLEY. Senator, my background, at least in dealing with regulatory schemes as a practitioner, has been that there are some good ones and there are some bad ones. The bad ones ought to go because they are unwarranted and unjustified.

There are some reasons for agencies to exist in some measure, and Congress has made those determinations. When Congress sends the message, those policies ought to be implemented with a balance, in my judgment, and a fairness to all of the components that go into the making of congressional policy.

Senator FORD. And by that statement, I take from it that if you see some regulations that are bad, you would like to get rid of

them; and if there are some regulations that are needed, you might even recommend them.

Mr. LAMBOLEY. Those are possibilities that I certainly would consider.

Senator FORD. Mr. Chairman, next is a question from Senator Exon for all three nominees: What is your attitude on participating in the voting on matters or which proceedings, including hearings and other deliberations, have been substantially completed prior to your assuming office?

Mr. STRENIO. Senator, I would certainly view that as something that I would do only if I were absolutely certain that I had had sufficient time to fully review the record and be able to vote on the basis of my own independent judgment and the basis of my own thorough inquiry.

So without talking about any particular matter and without knowing exactly how long it would take me to come up to speed on a particular matter, I would just say that I would be very concerned not to come in on the very last act of a play and try to write a review about how good or how bad it is.

Senator FORD. Thank you.

Secretary Simmons.

Mr. SIMMONS. Sir, I would have to evaluate each one of those cases on a case-by-case basis and those that I have participated in prior to this, when I was on the Commission before, and if I thought I were competent on the subject, I certainly would participate.

Otherwise, if I had not had time to read the record and all of the information that was there and make an evaluation, I do not think I would be inclined to do so.

Senator FORD. Mr. Lamboley.

Mr. LAMBOLEY. I, too, would share the view that it is very difficult to make determinations of significant issues without having had a chance to study them or evaluate the record and analyze the issues and attempt to form an independent view of the issues and how they ought to be disposed of.

Senator FORD. Next I have a question from Senator Long. His question is this: The Long-Cannon amendment adopted as part of the Staggers Rail Act was intended to protect captive shippers from unreasonably high rail rates. The amendment seeks to prevent high rates on captive shipments from being improperly used to subsidize revenue deficiencies among competitive traffic. This is particularly significant in coal shipments, where utility customers are the ultimate victims of high rail rates.

Do you believe that captive shipments such as coal should be used to subsidize lower rates for competitive traffic? Do you have any views as to how the burden of proof should be allocated between railroads and captive shippers in establishing the reasonableness of rail rates?

If you want a copy of that question, I will let you read it. That is from Senator Long.

Mr. LAMBOLEY. Senator, my response to Senator Long's question would be that it is my impression that all of the policies that are enunciated by Congress in the Staggers Act ought to be the compo-

nents and factors upon which one makes an evaluation of the implementation of the act.

Now, not all of the policies are going to come into play at the same time and in the same cases. There are some that are going to have priority and some that will not, because there are some that will not even be existent in the case.

With respect to the captive shipper, I would like to make clear that the captive shipper situation deserves considerable attention. The issues that are presented by the captive shipper situation—the market dominance situation by a carrier—in my judgment are quite complex and quite sensitive.

As the question suggests, the commodity involved has an energy impact, has a consumer impact. And it seems to me that some of the judgments made about decisions in that regard have to be sensitive to the fact that other factors, such as consumers, such as energy, and such as environment, may come into play in the decisionmaking process.

It would be my intention, Senator, to include consideration of those in my deliberations as a commissioner.

Senator FORD. Andy.

Mr. STRENIO. Thank you, Senator.

I think I would certainly be inclined, as Senator Long suggests—I would certainly not view it as a desirable thing to have captive shippers subsidizing revenue deficiencies on competitive traffic. I think in this field it is important that all of the groups involved pull their own weight, that it is not a good thing to have that sort of phenomenon occurring, both because it may be a way of protecting inefficient management on the part of the shipper in the non-competitive area and inefficient management is not something that we ought to be protecting; and I am also concerned that that sort of situation, where those kinds of funds were being used to subsidize competitive services, that that would adversely affect other people competing in those competitive services, to the detriment of those competitors and the public alike.

As to the question about the burden of proof on establishing the reasonableness of rail rates, I understand that the current ICC procedures place that burden in terms of coming up with the information on certain parties in particular circumstances. I am not familiar enough with the ins and outs to say whether the current ICC rules are indeed the proper allocation of that responsibility.

But I would note that in the area of the captive shippers, where it is their responsibility, that I am sensitive to the possibility that under certain circumstances and under certain deadline requirements they may find it very difficult to come up with the kind of information that has a proper bearing on the ICC's determinations there. If in fact I were faced with a set of circumstances involving that problem, I would look at it very closely to see whether some sort of procedural revision is desirable in order to overcome the difficulty.

Senator FORD. Thank you.

Mr. Simmons.

Mr. SIMMONS. Yes, sir. The Long-Cannon amendments are referred to many times as the management factors or management efficiencies. It is one of the four constraints that I voted on in the

notice on maximum coal rate guidelines. It is a very important factor because it deals with the efficiency of the railroads.

I think that it certainly is one of the four constraints that ought to be examined. The first one is stand-alone costs, and then the Long-Cannon factors, then revenue adequacy, and then annual rate increases.

Staff advise me that they have received the comments as it relates to this particular case, and I have not examined them. I certainly will examine them and hope to make an intelligent decision.

Senator FORD. Mr. Chairman, may I ask one question of you, if I may?

The CHAIRMAN. Sure.

Senator FORD. As to the questions that were submitted to all three and then the so-called Ford questions answered from all three in writing, will they be part of the record?

The CHAIRMAN. They will.

Senator FORD. Fine. I have no further questions. I thank the chairman for being so kind, and I thank you, gentlemen, for your patience.

The CHAIRMAN. I started with Mr. Lamboley last time, so I will start with you, Mr. Simmons, on this. This is a very specific question. It relates to antitrust immunity for collective ratemaking on joint line rates in the trucking industry.

Do you see any need to continue that antitrust immunity?

Mr. SIMMONS. Well, that particular subject as it relates to antitrust immunity is being studied right now in MC-172. I have not familiarized myself with it at all, sir.

The CHAIRMAN. Mr. Simmons, that subject has been talked about and talked about before you went on the Commission last time. The Motor Carrier Ratemaking Study Commission recommended getting rid of it, the Department of Transportation did, the Federal Trade Commission did.

Mr. SIMMONS. I have not seen the record, sir.

The CHAIRMAN. You mean you do not have any opinion on that subject?

Mr. SIMMONS. I guide myself by the regulations and the statutes that are present when I am there.

The CHAIRMAN. All right.

Mr. Strenio.

Mr. STRENIO. Senator, as to MC-172 itself, I think that it is unlikely that we will be confirmed in time to be voting on that, but that possibility is there, so I would like to address a few comments, not to MC-172 itself, but to the general approach that I think is appropriate.

I think as a matter of the law of the land and as far as sound economic and public policy, antitrust ought to be the rule and exceptions to antitrust responsibilities and law ought to be as infrequent and as narrowly drawn as possible. I think that is where the public interest lies.

The CHAIRMAN. I take it that you do not want to comment on this because of 172?

Mr. STRENIO. That is correct. I want to say on 172 itself that I have not drawn a final conclusion in terms of the proceeding, and I have been very careful to consider that there are a number of fac-

tors involved. In the eventuality that the timing worked in a certain fashion and that was before the Commission, I want to at least reserve the possibility of participating in that if General Counsel rules that I may do so in a fair manner. So I do not want to address myself to 172 in particular.

But in terms of giving you an answer to your question in terms of my general observations of what antitrust ought and ought not encompass, I think that, as I said, exceptions to it ought to be rare and ought to be only when there is compelling justification.

The CHAIRMAN. The reason I ask this particular question is because, of all the subjects we have had on trucking deregulation, we passed the Motor Carrier Act and we got rid of antitrust immunity or single lines, and as a matter questions as to that immunity appeared just a month or so ago.

There has been a long debate about joint, and the Motor Carrier Ratemaking Commission recommended getting rid of it for joint. Some of the trucking companies say, oh heck, it is gone anyway; if we cannot have single, you really de facto cannot have joint. I am not sure that argument holds for sure. It may or may not.

But of all the subjects involved in trucking deregulation, this one has been talked about and talked about and talked about for 5 to 6 years, and not just sporadically but perpetually.

Mr. Lamboley.

Mr. LAMBOLEY. Senator, I too have been made aware that there is a case pending and that the prospects are that there might be an opportunity to participate in the decision, and so would reserve specific comments. I have not had an occasion to read the recent report of the study group concerning that. I am aware of the general conclusion and recommendation. I am not sure of all of the factual record and assumptions that may have been made in connection with it.

But let me say this: It has always seemed to me a general philosophy that as economic regulation diminishes then consideration of antitrust is enhanced, and if the congressional policy is for further limitations on economic regulation it would seem appropriate that its replacement would be a consideration then of the antitrust protections for those in the marketplace.

The CHAIRMAN. Let me ask you this now, going the other way. When we passed the Bus Deregulation Act, we by and large preempted the States. Do you think we ought to do the same thing with trucking?

Mr. LAMBOLEY. Senator, it seems to me—

The CHAIRMAN. I mean, the standard for the trucking industry is significantly less, and we have left the States with more jurisdiction than we did over buses.

Mr. LAMBOLEY. Senator, I am aware that there are State jurisdictions that have exercised and continue to exercise in varying degrees economic regulation in the trucking industry and perhaps other modes as well.

The area of Federal-State relations seems to me to be one that Congress has sought to balance in many respects and has been a subject matter for considerable litigation, whether or not States are preempted from acting. It usually winds up in the courts.

The CHAIRMAN. My question is should we preempt them? Assuming we have not, should we?

Mr. LAMBOLEY. In answer to your question, it seems to me that there may be areas in which the States have legitimate and possibly overriding interests which they will seek to protect, and in contrast there are needs of the Federal Government to have a uniform policy, and to the extent that those collide there are some opportunities, it seems to me, within the Commission's framework in which a dialog with the States might very well be appropriate to determine whether or not there cannot be an ironing out of the humps and the hurdles that may exist between the two regulatory structures, one on the State level and the second on the Federal level.

It would be my thought to encourage dialog, to develop a situation where both State and Federal interests are balanced. To the extent that the parties engage in that dialog, to the extent that we use the forms that may be available for that, indeed under the auspices and some initiative by the Commission itself, we might better be able to determine whether it is necessary for the Federal Government to act in a classic preemptive fashion, as opposed to a coordinated fashion, with the States and their interests.

The CHAIRMAN. Mr. Strenio.

Mr. STRENIO. Senator, I share Mr. Lamboley's concern for a due regard for federalism, and also I think that the ICC in this area, as in a number of other areas, has an obligation to reach out and see if we cannot take care of a particular emerging problem by working it out and not having it fester, and then come up to the Hill after a long period of time and with the problem growing more intractable.

Having said that, I must say that I think there is a concern that we may be witnessing a situation where States through regulation—it may be incipient that we end up with a national transportation system that is subject to a very confusing mish-mash of regulations, and that the net result is that the national transportation policy as enunciated by Congress in favor of competition becomes thwarted inadvertently through a multiplicity of inconsistent and conflicting State actions.

I think that I want to reserve judgment as to whether in fact at this time we can say, yes, there ought to be preemption, but I do think that that area of concern is a serious one. If that situation develops I would hope that we at the ICC, in conjunction with you all, would be able to address that and advocate whatever remedial steps are necessary.

The CHAIRMAN. Mr. Simmons.

Mr. SIMMONS. Yes, sir. I think Congress was justified in preempting the authority of the States as it relates to bus transportation, and I think that there have been evidences of times when the State authorities have unfairly or detrimentally, through intrastate commerce, have adversely affected the interstate rules.

Clearly, some Federal action was needed, and I believe Congress was correct in this particular area of preempting the States.

The CHAIRMAN. My last question, Mr. Lamboley, is for you. You have been very patient in waiting 1½ years after you were nomi-

nated, and now your term runs out in December of this year. Have you had any hint that you might be reappointed?

Mr. LAMBOLEY. Senator, I am looking for a place on a month-to-month basis.

The CHAIRMAN. Wendell, do you have any more?

Senator FORD. No, thank you. I have no further questions.

The CHAIRMAN. Gentlemen, thank you very much.

Mr. LAMBOLEY. Thank you, Mr. Chairman.

Mr. STRENIO. Thank you, Mr. Chairman.

Mr. SIMMONS. Thank you, Mr. Chairman.

[The questions and answers referred to follow:]

J.J. SIMMONS

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question 1. Why do you think you are qualified to serve as an ICC Commissioner? What do you hope to accomplish as a Commissioner?

Answer. Since 1949, I have had 12 years' experience as an executive in a thriving small business, nine years as a U.S. Government executive managing both a regulatory agency and a government industry liaison office, eleven years as a corporate executive in charge of Government Relations, ten months as a Commissioner of the U.S. Interstate Commerce Commission, and one year as Under Secretary of the U.S. Department of the Interior. I believe these broad managerial and technical experiences both in Government and industry qualify me to serve as a Commissioner on the Interstate Commerce Commission.

As a commissioner, I will carry out the policies embodied in the statutes under which the ICC functions to the best of my understanding and abilities.

Question 2. How would you characterize your regulatory philosophy with respect to transportation issues?

Answer. I believe that a sound transportation system can best be achieved through the promotion of marketplace principles. To the extent that government regulation exists, we must be careful that it is fulfilling a public need.

In the last several years, Congress has enacted significant reform legislation affecting the motor carrier, rail, household goods, and bus industries. In each instance, the legislation was designed in large part to relax regulation and to encourage competition and private initiatives. If confirmed, I will administer my duties at the ICC in compliance with the provisions of this legislation, which I fully support.

Question 3. The Motor Carrier Act of 1980 eased entry standards for motor carriers of freight. In your opinion, has the ICC been too restrictive, too liberal, or about right in its implementation of motor carrier entry policy?

Answer. The Commission's implementation of the motor carrier entry policy has essentially been correct. This conclusion is evidenced by the thousands of new carriers who have received authority since the bill's enactment. Established carriers have also taken advantage of eased entry to expand their operations. As a result of these developments, competition in the industry has increased significantly. This competition has benefited shippers and consumers through improved efficiency and competitive rates.

Congress intended to promote competition and encourage carriers to provide more innovative and responsive services to the public. By affording carriers broader opportunities to compete for traffic and permitting ratemaking flexibility, the Commission has substantially implemented this mandate.

Question 4. In your view on what factors should entry regulation for motor carriers of freight be based? Do you believe carriers should be required to meet any standards beyond a showing of safety fitness and insurance?

Answer. In my opinion, the public need standard for licensing motor carriers of freight no longer serves any useful purpose. I would support removal of this required showing through legislative action.

Showings of safety fitness and insurance are crucial for the protection of the public. In addition, so long as DOT or the ICC regulates any other areas of motor carrier operations, I believe an applicant for authority should be required to demonstrate a willingness to comply with all applicable regulations. Flagrant and repeated disregard for other regulations can indicate a likelihood that safety and insurance requirements will not be observed.

Question 5. Price discounting has been pervasive in the trucking industry since enactment of the Motor Carrier Act of 1980. Do you view this as a favorable or unfavorable outcome of that Act?

Answer. Price discounting is one of the many positive outcomes of the Act. During my tenure as a Commissioner, I do not recall ever interfering with carrier's price discounting by voting to suspend or investigate or rule against a proposal involving discounts or other motor carrier pricing initiatives. Price discounting reflects fierce competition in the industry envisioned by Congress. The motor carrier industry is an inherently competitive industry, and as a result price reductions and other pricing initiatives are to be anticipated, and even encouraged. The type of discounting occurring in the industry has been a long time practice in other competitive industries. There is no reason why such competitive pricing should not occur in the motor carrier industry as well.

As the Committee is aware, much of the discounting occurred during the last recession, and during my tenure as a Commissioner. I felt at the time that as the country and the industry recovered, discounting would level off, although some discounting would continue in the new competitive environment.

Question 6. Do you believe that trucking companies are engaging in predatory pricing practice? Do you believe the ICC's 1983 examination of predatory and discriminatory pricing (MC-166) adequately explored this issue?

Answer. I do not believe there is any indication that trucking companies are engaging in predatory pricing practices. The extensive rate discounting which followed passage of the Motor Carrier Act of 1980 appears to be an expression of legitimate carrier initiative in response to heightened competition in the motor carrier industry. This conclusion is consistent with a recognition that predation is an unlikely pricing strategy in an industry characterized by few non-regulatory barriers to entry. I believe that the Commission's examination of predatory and discriminatory pricing in Ex Parte No. MC-166, which reached similar conclusions, adequately explored these issues.

As long as the Commission is responsible for economic regulation of the motor carrier industry, it must respond to allegations of unlawful pricing practices. I agree with the statement in Ex Parte No. MC-166 that a case-by-case approach to allegations of anticompetitive behavior by motor carriers is generally preferable.

Question 7. If, in fact, a carrier engages in predatory or discriminatory pricing, should that activity be considered illegal?

Answer. Predation is a violation of the Sherman Act, Section 2, and is considered an antitrust offense. If a carrier were to engage in so-called predatory pricing, that carrier would never reap the benefit. Eased entry and relatively low startup costs would be a better check on any such activity than the Federal Government. Any predation plan would not harm either competition or shippers, since no monopoly can result. With eased entry and low capital costs, and with alternative modes and markets available, it would make no economic sense for a motor carrier to even attempt a predation plan.

Question 8. Do you believe the ICC should have any authority over mergers between motor carriers of property?

Answer. I am aware that Section 21 of the Bus Regulatory Reform Act of 1982 gives the Commission the authority to exempt persons or transactions from the prior approval requirements for mergers, consolidations, and acquisitions of control involving motor carriers of property. I voted to approve the procedures for processing these exemptions on a case-by-case basis which were adopted by the Commission in Ex Parte No. 400 (Sub-No. 1), and I fully support the underlying policy of eliminating unnecessary regulation of motor carrier mergers. The Commission is now considering a proposal in Ex Parte No. MC-55 (Sub-No. 57) to exempt all such transactions as a class. Because I may participate in this proceeding, I prefer not to comment on the merits of a class exemption. In reaching any decision, however, I will consider the issues in light of the applicable statutory policies.

Question 9. Do you believe the Motor Carrier Act of 1980 has resulted in increased concentration in the trucking industry? In your view, would total deregulation lead to market domination by only a few carriers?

Answer. I do not believe that the Motor Carrier Act of 1980 has resulted in increased concentration in the trucking industry. The facts clearly demonstrate that by 1932, the number of carriers with interstate authority went from approximately 17,000 to an estimated 27,000. Some established carriers have expanded their operations, while a few have gone out of business. But the failure of these few has not discouraged thousands of people from seeking to enter the industry.

Neither would total deregulation lead to market domination by a few carriers. Partial deregulation has increased competition significantly. Removal of all barriers and low startup costs, would continue, if not escalate competition.

Question 10. Do you believe collective ratemaking in the trucking industry serves any useful purpose? If the industry were to be deregulated, should the antitrust immunity for collective ratemaking be retained or abolished?

Answer. Proponents of continued antitrust immunity for collective ratemaking in the trucking industry contend that rate bureaus perform important functions in the collection and dissemination of cost and price data and in providing a forum for shipper input into carrier pricing decisions. Any claimed benefits, however must be weighed against the anticompetitive effects of collective ratemaking and the possibility that these benefits could still be provided by the bureaus or other organizations without antitrust immunity. I am also aware that the Motor Carrier Ratemaking Study Commission has recommended to Congress that all immunity be withdrawn and that the Commission is examining this question in Ex Parte No. MC-172. Because I have not studied the record in Ex Parte No. MC-172, I prefer to not comment on the merits of that proceeding.

If the trucking industry were to be deregulated, I believe that antitrust immunity for collective ratemaking in general should be abolished. Whether special provisions should be made for a transition period and whether there should be any exceptions to a general withdrawal of immunity are questions which would require careful study.

Question 11. To what extent do you believe the ICC has the authority to further deregulate the trucking industry through administrative action?

Answer. The ICC does not have the broad exemption authority in the area of motor carrier regulation as it does in the rail area. Additionally, the Act specifically prohibits the Commission from granting Master licenses. The agency does have authority to exempt financial transactions and it should make extensive use of this power. I would support enactment of a more broad exemption provision in the motor area similar to that pertaining to rail.

As for those regulations remaining, the Commission should ease the burdens those regulations impose. For example, I would push for a reduction in the amount of information carriers must submit in certain proceedings whenever this information is not necessary in order for the ICC to reach a decision.

Question 12. If the trucking industry were to be deregulated, do you believe any type of labor protection provision, beyond what is currently in the 1980 Act, would be necessary?

Answer. It is my view that the job referral provisions of the Motor Carrier Act should be adequate to deal with the issue of employee protection if the trucking industry is deregulated. The adequacy of these provisions would of course depend to some extent on the exact form which any deregulation took. For example, the length of any transition period to total deregulation would affect the impact of deregulation on employees. In general, however, I do not foresee the need for extensive labor protection provisions.

Question 13. What impact do you think the Motor Carrier Act of 1980 has had on trucking service to small communities? What effect do you think further deregulation of trucks would have on such service?

Answer. According to a recent study on the Commission's Office of Compliance and Consumer Assistance, the MCA has had no detrimental effects on service to small communities as some had feared. I believe small communities will continue to benefit along with the rest of the nation from the inherent competition in the industry. If there is a need for service in an area, some trucker will provide that service. I would emphasize that as a Commissioner I would encourage the Commission to monitor service to small communities because it is required by the national transportation policy.

Question 14. Do you believe there is any need for continued regulation of the trucking industry?

Answer. I believe that there will be a continuing need for safety and insurance regulation in the trucking industry to protect the traveling public. I also believe that some regulation of the household goods segment of the industry is necessary and in the public interest. Regulations designed to protect owner-operators in their dealings with carriers help to insure a fair and competitive market for the services of these individuals.

With respect to other economic regulation of the industry, any decision to continue or abolish such regulation must of course be made by Congress. I attempted in my first term to exercise the Commission's jurisdiction so as to encourage competition in the industry within the confines established in the Motor Carrier Act of 1980. I hope to do the same in any further service on the Commission.

Question 15. In your view, do you believe intrastate regulation affecting interstate trucking companies should be preempted? Do you believe that such State regulations create problems for interstate carriers?

Answer. I understand that the National Association of Regulatory Utility Commissioners (NARUC) is presently working on a model code for States which still exercise economic regulation over intrastate trucking. This code will be similar to the federal regulatory scheme established under the Motor Carrier Act of 1980. I will follow with interest progress on development and adoption of this model legislation. Pending the outcome of this project, and as long as motor carriers do not identify serious problems stemming from State economic regulation, I see no pressing need for federal preemption in this area.

It is my impression that motor carriers are much more concerned over other areas of State regulation such as fuel taxes, fees, and nonuniform size and weight requirements. A bill is pending in the House of Representatives to create a commission under DOT to study this problem. I believe that this area does deserve serious study. Nevertheless, these issues do not come directly under ICC jurisdiction and thus can probably be addressed more fruitfully by other agencies and by Congress.

Question 16. In your view, is the Staggers Rail Act of 1980 working well?

Answer. I believe we are making progress towards achieving the goals enunciated in the Staggers Rail Act. Of major concern to Congress in 1980 was that railroads be allowed to earn adequate revenues in order to attract capital for investments and improvements. To facilitate this objective, the Act then provides railroads with greater ratemaking flexibility and requires the agency to decide cases within strict time frames. The Commission has made extensive use of its broad exemption powers to reduce regulation in both individual proceedings and in broad areas of transportation activity. Additionally, the Commission has streamlined various rail related regulations.

The result of these actions is the steady financial improvement of the industry. Railroads are competing for traffic once lost to other modes. Deregulation has allowed many of them to tailor their services to the shippers' transportation needs. Although the industry has yet to achieve revenue adequacy as defined by the Commission, the Staggers Act has encouraged attainment of a more financially healthy, efficient and competitive rail industry.

Question 17. Do you believe the ICC has properly implemented the Staggers Act?

The ICC has made a diligent attempt to implement the Staggers Act. Many business judgments, once second guessed by the Commission, are no longer subject to our review. The agency has granted hundreds of exemptions in various rail transactions and streamline regulations which impeded management prerogatives. Consistent with the provisions of the Staggers Act, the ICC has afforded the railroads greater latitude in exercising marketplace initiatives.

The ICC has eliminated cumbersome reporting requirements and most decisions are now issued expeditiously. In spite of these actions, the Commission should continue to seek areas in which regulation may not be achieving a valid public purpose, and where the marketplace might be a more suitable alternative to regulation.

Question 18. To the extent the ICC has been criticized for not giving sufficient emphasis to the Staggers Act's goal of protecting captive shippers, do you believe legislation is required to change this?

Answer. I believe that the various provisions of the Staggers Act reflect a congressional determination to eliminate unnecessary regulation, which in the past had hindered the railroads' ability to respond to market forces, while at the same time retaining some protection for captive shippers against unwarranted rate increases of other unreasonable pricing practices. The railroads must be afforded the flexibility to attract and maintain capital and to receive a reasonable return on investment, and shippers and receivers should be assured of a forum for redress of any legitimate grievances. In my first term as a Commissioner at the ICC, I attempted in the performance of my duties to balance these various goals and to promote policies equitable to all parties. If confirmed, I will do the same in the future. If the Congress concludes that the Commission as a whole has given insufficient emphasis to the protection of captive shippers, then remedial legislation is certainly a possible response.

Question 19. The ICC's proposed guidelines for determining maximum allowable coal rates are still pending. The guidelines have been criticized, because some believe they would not actually act as constraints on coal rates. Do you believe these guidelines should be modified in view of this criticism? Do you believe that the guidelines should continue to apply the concept of "differential pricing"?

Answer. I voted to seek comments to the proposed guidelines because I believed them worthy of public scrutiny. Comments were received after I had resigned my

position, and, consequently, I am not familiar with the various arguments put forth by the parties. Since I have not studied those comments, I am unable to express an opinion as to whether those guidelines should be modified.

As for the concept of "differential pricing", I believe that it is essential that it continue to apply to the guidelines. Differential pricing is not a new railroad pricing strategy, but rather a long standing practice sanctioned by the Commission. The Commission has long recognized that there is a need for railroads to price certain services above full costs to compensate for services where competition necessitates that rates be priced above directly variable cost, but below full costs. The practice is fundamental to the rail rate structure, and is an effective pricing mechanism.

Question 20. The ICC has been criticized for not carefully reviewing the cancellations by railroads of through routes, joint rates, and reciprocal switching agreements. Some shippers and competing rail carriers believe such cancellations seriously threaten competition. Do you believe this is an area where the ICC should play a more active role? Does this area require statutory revisions?

Answer. I believe that the Commission should monitor the effects of carrier cancellations of through routes, joint rates, and reciprocal switching agreements. It is my understanding that in a decision in *Ex Parte No. 445* issued in July of last year, the Commission stated that it was undertaking an in depth study of these cancellations. I am not aware of the status of this study. I have also been informed that a request by the Chlorine Institute, Inc., for institution of an investigation into the effects of cancellations is pending before the Commission. I do not want to prejudge any proceeding in which I may be called upon to vote, so I cannot state at this time whether the impact of these cancellations can best be examined in a broad investigation or on a case-by-case basis. Nevertheless, I believe that the competitive impact of cancellations is an important area for Commission consideration.

I would not want to recommend any statutory revisions until I have studied this area more thoroughly.

Question 21. The Staggers Act legalized contracts for rail service (49 U.S.C. 10713). Do you have any problems with the ICC's implementation of this provision?

Answer. Except in one respect, I supported the contract rules promulgated by the Commission. The rules properly balanced the right of the public and protestants to disclosure of a contract's essential terms against the right of contracting parties to confidentiality of competitive information. I departed from the majority in that I would have required the public summary of contracts involving ports to identify both the origin and destination of the contract movement, rather than merely the name of the port involved and the contract mileage. At the time I believed that the information was needed if a port wished to exercise its statutory right to challenge a contract for "unreasonable discrimination". Without knowing the origin or destination of the contract movement, a competing port had no basis for determining whether different transportation conditions apply to the contract movement and its own movement in order to exercise its right to contest a proposed contract.

Question 22. What is your position with regard to the imposition of conditions in rail merger cases?

Answer. I believe that conditions should be imposed in rail merger cases only when the conditions are clearly necessary to remedy identified anticompetitive effects of a merger and when the conditions will not frustrate significant benefits arising from the merger. For this reason, I do not favor the imposition of "standard" conditions except to the extent these conditions are or may be statutorily mandated. Rather, when imposition is necessary, the Commission should attempt to fashion conditions responsive to the particular factual situation before it. If I am required to vote on any rail mergers during my tenure at the Commission, I will attempt to follow these principles.

Question 23. In light of the ICC's increasingly limited budget, the agency clearly must make the best use of its resources. What do you see as the agency's top priorities? Please identify areas you believe the ICC should not be involved in, or in which its efforts should be materially reduced. In your opinion, may the agency discontinue or reduce these activities on its own, or must Congress act to relieve the public of this unnecessary regulation?

Answer. If confirmed, I will be guided by the national transportation policy in determining what should be the Commission's top priorities. In the areas of both motor and rail services, the Commission should give priority to eliminating regulations that are not strictly required by legislation and do not serve useful public purpose. I believe that the Commission should continue to be active in consumer protection, yet do nothing that would impose unreasonable and burdensome regulations on carriers or brokers. Furthermore, the Commission should not intervene in those transportation areas that do not promote any goals articulated in the statute.

The Commission must enforce those activities which are mandated by the statute. However, the Commission has an obligation to actively monitor the impact of the statute on the public and the carriers, apprise the Congress of its findings, and, where, necessary, recommend legislative changes.

Question 24. How well do you believe the Household Goods Transportation Act of 1980 is working? Do you believe any changes to that Act would be beneficial?

Answer. It is my impression that the Household Goods Transportation Act of 1980 has benefited both carriers and household goods shippers through the introduction of needed flexibility in the industry. Of particular importance in my opinion are the Act's provisions allowing carriers to offer binding estimates and its explicit legalization of guaranteed service provisions. I am not aware of any changes in the Act which would be beneficial at this time, although I would not rule out the possibility that further experience under the Act will suggest desirable modifications.

I also strongly support the Commission's decision to review the current household goods regulations to determine if any specific regulations are unnecessary for consumer protection and thus should be eliminated. This review, now pending in Ex Parte No. MC-19 (Sub-No. 36), is consistent with the policies set out in the Household Goods Transportation Act.

Question 25. Do you believe the Department of Defense should be required to adhere to ICC-established policies and procedures with respect to its household goods shipments?

Answer. I assume that this question refers to the Commission's reweigh regulations, which the Department of Defense has declined to implement on its household goods shipments. The Commission's regulations require that a shipper requesting a reweigh will be bound by the weighing whether it is higher or lower than the initial weighing. DOD insists on paying for shipments based on the lesser of the two measurements when a reweigh occurs.

In my earlier term at the Commission, I voted in favor of an interpretative statement in Ex Parte No. MC-19 (Sub-No. 36) which concluded that, given the Commission's limited jurisdiction over government traffic rates, the reweigh regulation could not and should not apply to movements of household goods under 49 U.S.C. 10721 for DOD or any other federal agency. I understand that this statement has been affirmed by the courts. In these circumstances, and absent any change in position by DOD, I believe the resolution of this controversy properly lies with Congress.

Question 26. The Bus Regulatory Reform Act of 1982 preempted the authority of State regulatory commissions in certain areas. Do you believe this preemption is justified or do you believe States should have more authority over interstate bus companies operating within their boundaries?

Answer. Congress was justified in preempting the authority of State regulatory commissions over motor carrier of passengers in certain areas. Facts presented before Congress demonstrated that State commissions consistently held rates for intrastate service below the level being charged for comparable interstate service. Under State regulations, carriers also had difficulty receiving permission to discontinue unprofitable routes, which resulted in a financial drain on their resources. Restrictive State regulatory actions adversely affected interstate commerce and the public. Carriers suffered detrimentally because they could not receive revenues sufficient enough to earn a fair rate of return. The public suffered because interstate passengers subsidized intrastate service. Clearly, some federal action was needed. However, Congress wisely chose to leave regulation of intrastate bus service with the States. Federal preemption occurs only under statutorily prescribed conditions.

I believe that the Federal Government should maintain that preemption authority for the time being.

Question 27. In your view, has the ICC correctly implemented the Bus Regulatory Reform Act of 1982?

Answer. While I did participate in promulgating rules designed to implement the Bus Regulatory Reform Act, actual implementation began after my departure. I am aware that there is some controversy with regard to service for small and rural communities, and I think that the Commission should continue to monitor the situation. On the whole, however, indications are that results have been favorable since enactment of the Bus Act.

Question 28. Do you believe antitrust immunity for collective ratemaking is needed in the intercity bus industry? If so, for what reasons?

Answer. I am aware that the Motor Carrier Ratemaking Study Commission has found that there are no legal, economic, or other public interest justifications for continued antitrust immunity for collective ratemaking in the bus industry. The Commission's report thus recommended that the remaining immunity be eliminated in the near future. I have not had an opportunity to familiarize myself with this

report and thus have not reached a definitive position with respect to its conclusions.

It is obvious, however, that the bus industry is considerably more concentrated than the motor freight carrier industry. For this reason, removal of immunity for collective ratemaking by passenger carriers would not seem to involve many of the practical problems that proponents of continued immunity for freight carriers assert would result from removal of their immunity.

Question 29. The 1982 Bus Act provided a moratorium on entry into the United States by Canadian and Mexican motor carriers. President Reagan lifted the moratorium with respect to Canada, but it remains in place for Mexico. Do you believe entry by foreign carriers into this country is a serious problem? In your view, are U.S.-based carriers discriminated against by Canada or Mexico? Do you believe any action should be taken by the ICC, beyond its earlier investigation of this issue, to address this concern?

Answer. As far as I am aware, there has been no substantial evidence demonstrating that entry by foreign carriers is a serious problem. However, I am aware that in certain areas of Southern California there are concerns with regard to operations by Mexican carriers.

Mexico's constitution provides that only Mexican carriers may hold authority to operate within Mexico. Consequently, Mexico does discriminate against American carriers. As for Canada, there is no evidence of discrimination as American and Canadian carriers are treated alike. Regulation of entry is left solely to the individual provinces. My understanding is that it is difficult for a Canadian carrier from Alberta to get authority to operate within British Columbia, just as it is difficult for a carrier from Maine to get authority to operate within Nova Scotia.

No, I do not believe any further action is necessary. As long as Mexico discriminates against American carriers seeking to operate in Mexico, Mexican carriers should not receive interstate authority to operate within the United States. Canada is examining its own transportation policies, and our government should work with it in reaching a workable solution whereby entry would be less restrictive for both Canadian and American carriers who wish to operate within each other's borders.

Question 30. The feud between the current ICC Commissioners has been widely publicized. At issue are questions of regulatory philosophy, agency management, staff access, open meetings, representation of Commission views, and personality. Unfortunately, the feud has undermined the confidence of the public and Congress in ICC decision making. If confirmed, what do you think you can do to help address these questions and restore confidence in the agency?

Answer. If confirmed, it is my intention to continually make special efforts to encourage and facilitate a more friendly and cordial relationship between all the Commissioners, both new and old Commissioners. Good relationships between people require that concerned persons must "reach out" for those persons that are introverted, shy or who have unwarranted stereotypical opinions about other persons. I am a concerned person.

Question 31. In your last ICC confirmation hearing, you said that in establishing priorities, the Commission should place particular emphasis on establishing coal rate guidelines; using the ICC's exemption authority; and encouraging intermodalism. During your tenure at the ICC, what did you do to ensure that the Commission gave each of these matters priority treatment?

Answer. During my earlier tenure at the Commission, I actively supported Commission initiatives and actions in all three areas. With respect to coal rate guidelines, I voted to issue the notice in Ex Parte No. 347 (Sub-No. 1) which was served on February 23, 1983. The proposals in that notice must of course be reevaluated in light of the comments received, but I believe they represent a possible approach to coal rate guideline worthy of public comment.

In the area of exemption authority, I voted to exempt rail rates from the need for prior Commission approval when departing from the provisions of 49 U.S.C. 10726 (the long-haul, short-haul provisions) and to exempt from regulation numerous miscellaneous agricultural commodities moving by rail. I also voted to grant exemptions for a very large number of individual transactions involving rail contracts and abandonments, motor contract carrier tariff filing requirements, and other miscellaneous matters. Finally, I voted to issue notices proposing several exemptions which were finally granted after I left the Commission.

With respect to encouraging intermodalism, perhaps my most significant action was my vote in favor of the decision in Ex Parte No. MC-156. This decision eliminated the "special circumstances" doctrine to make it easier for railroads and rail affiliates to obtain unrestricted motor carrier authority.

Question 32. In that hearing, you also said that consistent with the Staggers Act, you would look into every aspect of further minimizing regulation of the railroad industry. You also said regulation of the motor carrier industry should be minimized. During your tenure, what specifically did you do to further minimize regulation of each of these industries?

Answer. The exemption authority as it related to railroads invests the Commission with sweeping authority to remove from regulatory review individual proceedings and broad areas of transportation activity. I supported numerous rail exemptions where I was convinced that the statutory criteria had been met. Likewise, I endorsed efforts to streamline various rail regulations that were not necessary to further the goals of the statute and served no useful public purpose.

In the motor area, I strove to follow the Congressional policy of liberal entry while participating in several hundred operating rights cases. I supported shorter filing periods for rate actions by individual motor carriers, and did not vote to interfere with an individual carrier's pricing initiatives.

Question 33. In that hearing, you responded to a question dealing with railroad abandonments of low-density lines. As part of your response, you said "the Commission should seek to promote alternative services (for example, motor or intermodal) in affected communities." It is our understanding that during most of your tenure at the ICC, you voted to grant motor carrier applications to provide substitute service without restriction to communities losing rail service. However, in *Hedrick Associates*, M.C. 138225 (Sub-No. 14), which was the last substitute service case you participated in, you apparently reversed your position and without explanation voted to restrict the motor carrier service which the applicants sought to provide. As a result, the communities involved suffered a loss of service. Does your vote in this case represent a change in your thinking on such substitute motor carrier service? If so, why? If not, why did you vote to restrict the application?

Answer. During my first term at the ICC, I generally followed a policy of authorizing motor-substituted-for-rail service without imposing any territorial or commodity restrictions. However, in the last few weeks before my departure, I reevaluated my position. In No. MC-138225 (Sub-No. 14) et al., *Hedrik Associates, Inc., Substitution-Motor for Rail*, the applicants requested that exceptions involving explosives, household goods, commodities in bulk, and Alaska and Hawaii be imposed in their general commodities. Applicants stated they did not want this authority and did not intend to offer those services. I explained in my vote that: "[T]he appropriate scope of authority to be granted in motion-substituted-for-rail applications has been a controversial issue for some time. I am now convinced that the Commission should not require applicants to accept unrestricted authority where they are unwilling to perform unrestricted service and submit no evidence of their fitness or ability to do so."

Since the applicants stated they would not offer the services at issue, I do not believe imposition of the restrictions deprived the involved communities of any service. On the other hand, it allowed these applicants to avoid the possibility of increased insurance premiums or court challenge to their grants of authority.

Consistency is an important factor in the regulatory process. However, I think it is also important for those persons exercising regulatory authority to be open to reconsideration of previous positions under appropriate circumstances.

Question 34. When you began your service at the ICC in 1982 you advised the Commission that you would not be participating in cases for the first several weeks while you assembled your personal staff. Yet, only a few days after you had been sworn in you cast a vote in the *Discount Rates* case in which you joined Chairman Taylor as a dissenter in a 4-2 decision. After voting in this case, you did not vote in any other cases for several weeks. Why did you vote in the *Discount Rates* case? Did you do so at Chairman Taylor's request?

Answer. If I voted in any case a few days after I was sworn in, I must have felt competent to make an objective decision based on the knowledge I had gained while preparing for my hearing or with the help and advice that was given to me by the agency staff. As I recall, I was sworn in on April 27, 1982. After the first week, I returned to New Jersey to move my family. On May 5, 1982, I fell down a flight of stairs backwards while moving which incapacitated me for several days. I returned to Washington on May 15, 1982. The Chairman did not request that I vote on the *Discount Rates* case.

Question 35. The ICC is a collegial agency. Each of the Commissioners is responsible for making decisions. However, there is some indication that while at the ICC, you gave special deference to the Chairman because of his position as Chairman, and this was reflected in your decision-making. Do you believe that the Chairman of an agency like the ICC should be given special deference? If so, why do you think

Congress provided for multiple Commissioners at the ICC? If not, then if confirmed, do you intend to carry out your responsibilities in an independent manner?

Answer. I do not believe that the Chairman of any agency should be given special deference because of his position as Chairman. While I respect the Chairman and all of the Commissioners, I am not in awe of them. We are all equals. I believe Congress provided for multiple Commissioners at the ICC primarily so that objective decisions would be rendered.

If confirmed, I absolutely intend to carry out my responsibilities in an independent manner.

Question 36. It has been reported that during your tenure at the ICC you "virtually always voted with Chairman Taylor." Please list the significant Commission cases in which there were split decisions, where you did not vote with the Chairman. Please explain the reasons for your votes in those cases.

Answer. In my opinion, the media's reporting that during my tenure at the ICC I "virtually always voted with Chairman Taylor" is a classic example of a racist remark or a stereotypical conclusion. Why should the one Black member be accused of following the Chairman's lead? Does it ever occur to them that the Chairman could have followed my lead?

Regardless of the media's assertions or anybody else's opinion, my votes were objective and independent.

Question 37. What do you consider as your greatest accomplishments during your tenure at the ICC?

Answer. Despite assertions to the contrary, during my tenure at the ICC, I am very proud of the objectivity and independence I have brought to the Commission. Not having been closely associated with the rail, trucking, bus, barge or the moving industries, I approached each case with no predisposed opinions or thoughts.

Probably my greatest accomplishments are related to my caring about the employees of the ICC. It maintained an "open door" policy to all employees and their personal problems. I felt this posture was necessary because since the first day I walked into the Interstate Commerce Commission building, the grim reality of the RIF process has been eliminating loyal employees from the payroll. This process has been devastating to employee morale and particularly raining havoc upon minority employees who generally have less seniority than white employees because of past discriminatory practices prevalent at the ICC.

Question 38. You apparently have been back at the ICC since you left the Department of Interior last February. It also has been reported that you have hired back your former ICC staff. What have you been working on since you've been at the ICC? Who has been paying your salary? What has each of your staff people been working on? Who has been paying their salaries?

Answer. I have not hired back my former ICC staff. I have told that these persons are assigned and have been working for the Office of Proceedings while occupying their former offices after my return. I have been paid by the Department of Interior during the interim and have utilized my time analyzing the relationship between the production of domestic crude oil and the importation of foreign crude oil and petroleum products. I have been busy working with the Statue of Liberty Ellis Island Commission as a Commissioner, and I am a Board member of the Statue Ellis Island Foundation which is the money raising arm of this multimillion dollar effort.

Question 39. It's been reported that you have been reviewing the Grace Commission Report. If confirmed, do you plan to make any recommendations to the ICC and the Congress based on your review? If so, what recommendations?

Answer. I have not been reviewing the Grace Commission Report.

QUESTION OF SENATOR PRESSLER AND THE ANSWER THERETO

Question. Earlier I asked whether you could foresee a specific circumstance in which you would require a railroad or other common carrier to continue operating in an area, even though it is losing money (but more than making up the difference from its operating authority in another area) if it is demonstrated to be in the public interest. I believe the answer was in the affirmative.

To be a little more specific, let me use a recent railroad abandonment case in South Dakota in which the ICC—by a two to two vote—upheld the Administrative Law Judge's (ALJ) recommendation to deny the Chicago and North Western Railroad's request to abandon the 165-mile line between Ft. Pierre and Rapid City, South Dakota.

The strong public interest in maintaining operations of that line was one of the major reasons for requiring the railroad to continue operations, although they said they were losing money.

Would you have agreed with the ALJ?

Answer. The statutory standard governing abandonments is whether the present and future public convenience and necessity permit the proposed abandonment. In implementing this standard, the ICC must strike a balance between the potential harm to affected shippers and communities which would result from abandonment and the present and future burden which continued operations would impose on the carrier and on interstate commerce. The ICC must also consider whether the proposed abandonment will have a serious, adverse impact on rural and community development.

To reach a fair and equitable decision in an abandonment proceeding, the Commission must consider these factors: opportunity costs, operating losses or profits, rehabilitation costs of the line, traffic levels and prospects for future traffic. The Commission must weigh these factors with needs of the shippers and communities.

Senator, I am not familiar with the issues surrounding the specific South Dakota case you mention. Depending upon the judicial outcome, it is possible that the same case could come before the Commission again and I do not want to prejudge any case. But in considering abandonments in the past, I was guided by recent history in the railroad industry. As you are aware, improved trucking service resulted in intense competition with the railroads. Because they were straddled with regulations and inflexible government thinking which hindered management initiatives, the railroads were slow to respond to their motor carrier competitors. Part of this past government approach was rampant cross-subsidization, where railroads were forced to continue operating unprofitable lines and told to make up the difference from its operations on profitable lines. This created a financial drain on their entire operations. Government recognition that unnecessary regulations and laws contributed to the railroads' financial troubles led Congress to pass the Staggers Rail Act, which significantly deregulated railroads. While cross-subsidization may at times still be necessary, its application in a particular case, should be the exception, and not the rule. Railroads should be able to sever their unprofitable lines. Consistent cross-subsidization prevents railroads from expanding their markets, seeking efficiencies, and creating a financially strong and viable industry.

But I believe there are instances when the interests of the shippers and communities might prevail, and the railroad compelled to continue service on an unprofitable line. For example, there might be instances where no alternative transportation service exists. If there exists a case where the likelihood of increased traffic in the near future could result in revenues significant enough to offset losses, the Commission could consider denial of the abandonment. Continued service might also be warranted where there is compelling evidence that an abandonment would cause severe adverse economic hardship on a community either because the rail-dependent industries will have to shut down or relocate if an abandonment is permitted.

QUESTIONS OF SENATOR GORTON AND THE ANSWERS THERETO

Question 1. It is my understanding that while on the Commission you voted against the boxcar order. Please explain the reasons for your dissent.

Answer. I dissented from the Commission's grant of Conrail's petition for exemption from regulation of rates on boxcar traffic because I believed it did not meet the statutory criteria of section 10505, in particular, that provision which directs us only to grant an exemption if there is no possible likelihood for the railroads to abuse their market power.

Of particular concern to me was that no persuasive arguments had been presented which demonstrated for a certainty that there was no potential for abuse of market power. I believed that the Commission was required to make an affirmative finding that continued regulation was needed to protect shippers. A number of shippers, including shippers of pulpwood, paper products, non-ferrous recyclables and auto parts, presented the Commission with data persuasive enough to convince me that there was the potential for market power abuse on a significant amount of traffic. I believe there are products which move in boxcars which are competitive and should be exempted. However, I believe the Commission should have made an effort to study the various product categories, determine if the possibility for abuse of market power existed, and if so, excluded them from this blanket exemption.

Additionally, I dissented because of the impact a total exemption would have on joint rates and through routes with Class III carriers. Congress had provided legisla-

tion which allowed Class III carriers to demonstrate that joint rate cancellations could adversely affect their operations. Under this blanket exemption, these smaller railroads were left without that protection. Moreover, the potential for abuse by larger carriers over division of profits with the smaller railroads was not adequately addressed by the majority during my participation in this proceeding.

While I agree that the Commission should attempt to promote efficiency in use of boxcars, I dissented with the majority's approach. The majority promulgated rules and labeled the effort an exemption. The decision was in fact a rulemaking but lacked the specific criteria for promulgating new rules. At the time I felt that radical changes in the car hire rules should consider and balance the concerns of private owners of boxcars against the need to promote and encourage efficiency in boxcar usage.

Question 2. What concerns me most about the Commission's new car hire regulations is the anticompetitive implications for small railroads. Many of the nation's Class III railroads—especially these in the Northwest—originate traffic destined for the Northeast region. In most instances the Class III railroads' sole connection is with a dominant trunk line carrier. As the Court observed, the Commission's new rules "placed significant bargaining weapons in the arsenal of the destination carrier . . . and simultaneously deprived the originating carrier of the benefits" it could receive under a truly deregulated market. Do you share this concern? If not, in your opinion what protections are afforded the small originating carrier under the Commission's new boxcar rules? The Court further expressed doubt that the mere existence of the antitrust laws satisfies the Commission's statutory burden of making a finding that large carriers will not try to drive Class III railroads from providing service over efficient routes. Do you agree?

Answer. Class III carriers play a significant role in promoting and maintaining a viable and efficient national transportation system. In many areas, these small carriers provide the only viable railroad service for small and rural communities. Congress recognized the role of the Class III carriers in the national transportation system, and made provisions in the Staggers Rail Act that would provide protections for them in disputes with Class I carriers over joint rates and through routes. In my opinion, the Commission's blanket exemption removed those statutory protections.

I am not familiar with all the issues raised by the decision of the U.S. Court of Appeals. Since I am not a Commissioner, I have not had access to all the information stemming from the litigation. However, I do understand that the Court has apparently agreed with positions expressed by me over this matter.

Question 3. Would you support elimination of regulations relating to mandatory interchange and the rail common carrier obligation? Please explain.

Answer. At this time I would not favor elimination of regulations relating to mandatory interchange and the rail common carrier obligation. It is my impression that these regulations contribute significantly to maintenance of a truly national rail transportation system. As implementation of the Staggers Act proceeds, it may be desirable to reexamine these regulations in light of changes in the rail industry. However, I do not foresee the possibility of their elimination any time in the near future.

Question 4. The U.S. Court of Appeals reversed and remanded the ICC's decision in *Ex Parte 346* (Sub-No. 8)—the so called boxcar deregulation decision. What action would you recommend that the ICC take with respect to boxcar regulation in view of the Court's order? Would you support a total exemption of all boxcar traffic from regulation? Would you support the deregulation of other types of rail freight cars?

Answer. Senator, I am aware that the Court upheld the Commission's decision as it relates to exemption of single line boxcar rates, but reversed and remanded to the Commission that aspect of the decision dealing with joint rates and through routes, and the revised car hire rules. I understand that the Commission is now considering its options. Despite my previous dissent, I do not wish to comment on what action the Commission should take as I might participate in any further action on boxcar deregulation. I can assure the Congress that any action I take as a Commissioner would reflect a thoughtful and balanced approach to my regulatory responsibilities.

If a proposal to deregulate other types of rail freight car comes before the Commission, I will make a determination as to whether the proposal meets the statutory criteria of 49 U.S.C. 10505.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question 1. Democratic members continue to be concerned that true Democrats are nominated for Democratic vacancies at independent agencies. In this regard, a

concern has been raised about your previous executive level position at the Department of Interior under the current Republican Administration. What is your response to this concern? Would you please elaborate on your Democratic credentials?

Answer. I am extremely concerned and saddened that my Democratic credentials have been questioned by my fellow Democrats because I served my Country as Under Secretary of the Interior during the current Republican Administration. In 1982, while I was serving as a Democratic Commissioner at the Interstate Commerce Commission, Secretary of the Interior Jim Watt asked me if I would consider being Under Secretary. I turned the offer down on two occasions. After I was asked the third time, because of my abiding concern with our Nation's natural resources and our National Security, I accepted the President's nomination.

The entire Simmons family, since Oklahoma became a State, have been registered Democrats. I personally have run for elective office as a Democrat in Muskogee County on two occasions. I am and have been a registered Democrat in the State of Oklahoma for forty-one years. I currently vote in precinct No. 27, Muskogee County, Oklahoma.

Question 2. You have served as an ICC Commissioner previously. How would you characterize the positions which you took during your prior term? Would you expect to continue to promote positions such as those if confirmed as Commissioner?

Answer. During my first tenure as a Commissioner at the Interstate Commerce Commission, I always approached any decisions I had to reach with the view to regulate as little as possible while still adhering to the letter and spirit of the Interstate Commerce Act. My consistent position was that a sound transportation system can best be achieved through promotion of marketplace principles. Nevertheless, while at the ICC, I took the position that we should listen to all parties with an open mind and balance their needs and concerns where the statute allowed.

If confirmed, I will again administer my duties in a manner consistent with the Congressional intent to relax regulation and encourage competition and private initiatives.

Question 3. Given your prior experience at the Commission, what would you like to see accomplished if confirmed for another term? Has the ICC taken a regulatory direction that you would like to continue or change?

Answer. If confirmed for another term, I will work to eliminate those regulations which do not promote competition and hinder private initiatives, but insist that the Commission adhere to the laws designed to protect shippers and the public. Additionally, I would diligently work to see that the Commission devise final coal rate guidelines which balance the need for railroads to attract and maintain capital and receive a reasonable return on investment, with the need for shippers and receivers to address their legitimate grievances before an objective forum.

I would also like to see the Commission further reduce barriers to entry in motor carrier licensing proceedings, but in a manner consistent with the Motor Carrier Act of 1980. For the public protection motor carriers should continue to demonstrate safety fitness and insurance. However, so long as the federal government regulates other areas of motor carrier operations, an applicant for authority should be required to demonstrate a willingness to comply with applicable regulations.

As the Committee is aware, the ICC is in the process of reducing its staff. As a result, many ICC employees have been fired or demoted. Minorities and other disadvantaged persons have felt the brunt of these reductions. As a black man who has suffered discrimination in the past, and as a human being, I am concerned. I know that the ICC must make cuts because of our limited budget, but, if confirmed, I would like to see those reductions done in an equitable manner and free of discrimination and favoritism.

With respect to the Commission's regulatory direction, Congress has set the tone. It has chosen to place as little emphasis as possible on economic regulation, and rely instead on competition and private initiative in order to establish a sound transportation system. For the most part, the Commission has attempted to implement that policy which I support.

Question 4. The ICC has been criticized for not fully exercising the statutory authority it has been given under the various regulatory reform measures. Some groups claim that the ICC has not provided the regulatory protection intended under those acts. Others by contrast claim that the ICC has not fully used its powers to further deregulate the transportation industry where appropriate. How would you characterize the past actions of the Commission in this regard?

Answer. In most significant proceedings that come before the Commission, there are proponents for a particular position, and opponents of that position. When one side loses, it claims that the Commission is not adhering to the intent of Congress. Just as with any federal agency, the commission must listen to the various argu-

ments raised by the parties, and then attempt to objectively balance the needs of the shippers, carriers, and the public and reach a decision that is consistent with the law. Whether one agrees or not with their positions, I believe that individual Commissioners have attempted to carry out what they believe was the intent of Congress in an equitable manner.

Question 5. As you are probably aware, the ICC has been severely criticized for what could be termed its inability to function effectively, and without unnecessary dissension, to resolve the important transportation issues facing it. What is your perception of the problems at the Commission and among the Commissioners? What would you propose to ensure that the Commissioners work together toward constructive approaches to the implementation of transportation policy as intended by Congress?

Answer. Frankly, I do not know much about the criticisms or where they are coming from. My information is limited to the press and rumors. However, having worked with all the present Commissioners, I can say that, while they have their disagreements, they have tried to cooperate in implementing the legislation passed by Congress, and in the past, have met most of their statutory deadlines in significant proceedings. I will make every effort to encourage a cordial and friendly working relationship.

Question 6. With particular respect to the Staggers Rail Act, various groups have raised concerns that the Commission has not exercised its jurisdictional authority to protect captive traffic as was intended by the act, nor to preserve competition where necessary. Are these concerns well-founded?

Answer. In general, I think the Commission has done a reasonably satisfactory job in implementing the provisions of the Staggers Act. In establishing market dominance thresholds, the Interstate Commerce Act limits regulatory intervention to those markets where competitive forces cannot be relied upon to produce reasonable rate levels. This is consistent with Congressional intent that the railroads be free to set rates in those markets where competitive forces are sufficient to prevent abuses of monopoly power. When findings of market dominance are made, the Commission must then exercise its mandate with regard to rate reasonableness.

Of course, different parties will have different points of view concerning the reasonableness of particular rates. It is the commission's responsibility to balance the various policies set forth in the staggers Act which call for an emphasis on competition, minimizing the need for regulatory control, assisting the railroads in achieving revenue adequacy, and protection of shippers where there is an absence of competition. Although I might disagree with certain conclusions the Commission has reached, overall, I believe it has attempted to perform this balancing function properly. However, I would emphasize that these are complex issues, which I intend to study carefully if confirmed as a member of the Commission.

Question 7. A concern has been raised that the Commission has abused its exemption authority under the Staggers Act. Do you believe that this authority has been abused? Are there legitimate areas that could be exempted from regulation under this provision?

Answer. Under the Staggers Act, the Commission should use its exemption authority only in accordance with the congressional criteria set forth in 49 U.S.C. 10505. As a Commissioner, I will ensure that the criteria are properly applied to all proceedings concerned with exemption of rail related activities.

Question 8. Certain groups have criticized the Commission for completely abdicating its responsibilities under the Motor Carrier Act to continue to regulate certain aspects of truck transportation. How do you view the ICC's activities under the Motor Carrier Act? Are there areas where the Commission should be regulating that it is not?

Answer. The ICC activities pursuant to the Motor Carrier Act have generally been to promote competition by easing entry barriers and to permit price-service options to be controlled by market forces as opposed to direct regulations of rates and practices. I believe the Commission's actions have been generally in accord with the congressional mandate set forth in the national transportation policy. At this time I cannot specify areas where the Commission should initiate a new regulatory agenda concerning motor carriers.

Question 9. It has been nearly two years since Congress passed the Bus Regulatory Reform Act. How would you assess the Commission's implementation industry? Should the industry be completely deregulated?

Answer. In reviewing testimony presented by the Commission at oversight hearings on the Bus Regulatory Reform Act, it appears that the Commission has moved expeditiously and effectively to implement the Act in accordance with Congressional intent. Studies conducted by the Commission, as well as the testimony of industry

witnesses at the oversight hearings, indicate that the industry is responding positively to the operational freedoms afforded by the Act. There has been a significant amount of entry into the industry as new carriers begin operations and existing carriers expand. At the same time, carriers have moved to rationalize their route structures and eliminate noncompensatory rates. Innovative discount programs are being instituted as carriers become more competitive. I believe that this increasingly competitive environment will result in improved price and service choices which will benefit both the industry and the public.

I am aware of the concerns raised about the effects of route discontinuances and fare adjustments on the bus industry and the public it serves. There effects are not entirely unexpected as the industry reacts to the increasingly competitive environment created by the Bus Act. It often takes several years for an industry to fully adjust to the types of reforms contained in the Act and for the resulting changes to be thoroughly evaluated. At the present time, I have no position on complete deregulation of the bus industry. I would agree with statements made by the Commission that more time would be helpful to allow the industry and the public to adjust to the new environment and the Commission to assess its impact before advocating further deregulation.

Question 10. In recent months, the ICC has considered cases involving the combination of different types of transportation. How do you view the move toward intermodalism? To what extent can and should the Commission promote multimodal companies?

Answer. In the national transportation policy, Congress has emphasized that intermodalism is a goal of regulation that should be encouraged. The benefits of intermodalism include added competition, rationalized operations, improved and created efficiencies, and single- in lieu of joint-line service. Therefore, I would promote intermodalism where possible in accordance with the statute.

Question 11. With the impending sunset of the Civil Aeronautics Board, what is your of the future of the ICC? Should it be sunsetted, with remaining functions to be performed by an Executive Branch agency?

Answer. With regard to economic regulation over motor freight carriers and freight forwarders, it is my understanding that legislation has already been drafted to accomplish this. I would be very interested in a public discussion of this legislation and the issues it would raise.

With regard to regulation of other transportation modes, particularly rail carriers, the Commission still has important functions to perform. At this time, I do not favor transfer of these functions to an Executive Branch agency.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS THERETO

Question 1. In answers to questions from the Democratic Members of the Committee, you indicate that you would like to see the ICC further reduce barriers to motor carrier entry, consistent with the Motor Carrier Act. How would you suggest this reduction be accomplished? Has not motor carrier entry been relaxed as much as it can be?

Answer. It is possible that motor carrier entry has been relaxed by the Commission as much as it can be consistent with existing law. Nevertheless, if further means of reducing licensing requirements do present themselves, I believe the Commission should implement them. As I stated previously, at this time I have insufficient information to specify areas where the Commission should initiate a new regulatory agenda concerning motor carriers. I have also indicated my belief that the best method of further reducing motor carrier entry barriers would be the elimination by Congress of the public need standard.

Question 2. During this period when the transportation sector is moving from being more regulated to less regulated, concern has been raised that the ICC has not implemented the reform measures in such a way as to provide for the necessary transitional adjustments. How do you view this concern? Are there areas in which you feel the ICC could provide more transition?

Answer. Concern for an orderly transition to a less regulated transportation environment after almost 100 years of relatively tight regulation is certainly well placed. However, I believe the Commission has attempted to reduce the dislocation of regulatory reform as much as possible. In the motor carrier area the Commission was mandated to perform an immediate shift in its evidentiary standards for motor carrier entry. Nevertheless, within the confines of this mandate, interim rules were implemented which phased in new procedures and allowed some reliance on previous evidentiary guidelines. In the rail area, the Commission has again implemented

the Staggers Act with an eye to obtaining all possible input before an action is taken.

Question 3. In your answers to questions from the Republican Members of the Committee, you indicate that a case-by-case approach to illegal pricing in the motor carrier industry is preferable. To your knowledge, to what extent has the Commission been called on to regulate prices in the motor carrier industry?

Answer. The Commission has been called upon regularly since the passage of the Motor Carrier Act of 1980 to determine the reasonableness of motor carrier general rate increases. I believe Commission involvement in individual rate actions during this period has been minimal.

Question 4. You state in your answers that shippers must have a forum for redress of grievances. In the rail area, do you think the Commission has provided that?

Answer. In the rail area, I think the Commission has attempted to provide a forum for redress of shipper grievances. Unfortunately, the Commission has yet to develop a workable standard for maximum reasonable rail rates and is still in the process of "fine tuning" other important standards and procedures. The ability of the Commission to function as a truly effective forum will depend in large measure on the completion of these projects and on the specific standards and procedures adopted.

Question 5. In answers to questions from the Republican Members of the Committee, you mention your support for removal of certain restrictions on railroads acquiring truck lines. As you know, concern has been raised about the wisdom of railroads acquiring other modes of transportation and the potentially anticompetitive impact of such a combination. What is your view of this concern?

Answer. I am aware of concern over the potentially anticompetitive impact of railroads acquiring other modes of transportation. I believe the potential for any anticompetitive effects can best be considered within the context of individual merger proposals which may come before the Commission for approval. In fact, the competitive impact of a merger is probably the most important consideration in these proceedings.

QUESTIONS OF SENATOR FORD AND THE ANSWERS THERETO

Question 1. The Interstate Commerce Act provides that the policy of the United States Government in regulating the railroad industry is to maintain reasonable rates where there is an absence of effective competition (49 U.S.C. 10101a(6)). What does this mean to you? In particular, in your view, should a freight shipment be regulated by the ICC in regard to rates and service provided when a single rail carrier represents the only practical source of transportation for part or all of the movement from origin to ultimate destination or to a river, lake, or coastal port for transshipment by water carrier? Isn't this a situation frequently faced by shippers of heavy bulk commodities such as coal, grain, fertilizers, chemicals, and ores?

Answer. In my opinion, the provisions of 49 U.S.C. 10101a(6) constitute a directive that captive shippers should not be required to make an unreasonable contribution to the revenue needs of rail carriers through the rates applied to these shippers' traffic. I agree that shippers of heavy bulk commodities such as coal, grain, fertilizers, chemicals, and ores often have limited competitive alternatives or no alternatives to transportation service by a single rail carrier. In situations where market dominance exists, the Act clearly requires the Commission to regulate rail rates. A determination of whether market dominance exists, however, often requires a difficult factual analysis of all the circumstances surrounding a particular rail movement.

Question 2. The critical Long-Cannon Amendment embodied in the 1980 Staggers Rail Act and now provided in the Interstate Commerce Act (49 U.S.C. 10707a(e)(2)(A)(B)(C)) seeks to minimize noncompensatory traffic, to maximize revenues from traffic that contributes only marginally to fixed costs, to consider the impact of proposed rates or rate increases on attainment of national energy goals, and to determine whether one commodity is paying an unreasonable share of the carrier's revenues. How would you deal with such provisions in present law as they relate to the ICC's proposed coal rate guidelines which would allow rates to increase 15 percent yearly above inflation and in addition to claim that a rate is not unreasonably high if it is no more than what a coal shipper would pay to build and operate a railroad for the movement?

Answer. The Long-Cannon factors must be an integral part of any standard for maximum reasonable rates adopted by the Commission. These factors are one of the

independent constraints on rail pricing for coal movements proposed in Ex Parte No. 347 (Sub-No. 1). I have not yet reviewed the comments submitted in response to the notice in that proceeding. If confirmed, I will review those comments carefully, giving particular attention to responses on the Long-Cannon factors.

Question 3. Do you believe that Congress intended that the ICC balance the revenue needs of the railroads against the need to protect captive shippers?

Answer. Yes, I do believe that Congress intended for the ICC to balance the revenue needs of the railroads against the need to protect captive shippers. During my former service on the Commission, I endeavored to reach decisions only after full consideration of the legitimate needs of both carriers and shippers. If confirmed, I will do the same.

Question 4. Do you believe that the ICC has maintained this balance since October, 1980?

Answer. I believe that the Commission has attempted to maintain this balance. In large part because the Commission has not yet adopted final standards for maximum reasonable rates, it is too early to determine whether this attempt has been successful.

Question 5. Have you analyzed the ICC's proposed decision in Ex Parte No. 347 (Sub-No. 1), served February 24, 1983? If so, do you agree with it?

Answer. I voted to issue the proposals in Ex Parte No. 347 (Sub-No. 1) for public comment. I believed at the time, and continue to believe, that comments on the proposals will assist the Commission in eventually adopting standards for maximum reasonable rates. I have not had an opportunity to study these comments, so I cannot comment on the merits of the proposals. I can assure you, however, that I have not prejudged any issues and am not committed to ultimate adoption of the specific proposals advanced in February 1983.

Question 6. Do you believe that railroads should be permitted to raise rates for a captive shipper until they reach the point where it would be cheaper for the shipper to build its own railroad?

Answer. Stand-alone cost is one of the proposed constraints on rail pricing in Ex Parte No. 347 (Sub-No. 1). When I have reviewed the comments submitted in that proceeding, I will be better able to reach a conclusion on the utility of this approach. I should also note that stand-alone cost is only one of four pricing constraints proposed in Ex Parte No. 347 (Sub-No. 1).

Question 7. What do you believe should be the Commission's role in determining what is a maximum reasonable rate for a captive shipper of coal by rail?

Answer. The Commission must adopt some standard for maximum reasonable rates which gives effect both to the need for rail carriers to earn adequate revenues and to the need to protect captive shippers from unreasonably high rates. This standard must be a practical one capable of application in a wide variety of factual situations.

Question 8. What are the factors that you believe should be considered in determining what is a maximum reasonable rate for a captive coal shipper?

Answer. I believe that any standard for maximum reasonable rates for a captive coal shipper should include at a minimum consideration of the carrier's revenue need, competition for the traffic, management efficiency, and cost. Developing such a standard is an extremely complex problem, and I do not mean to imply that other factors should not also be considered. If confirmed, I will be dealing with precisely this question, so I prefer not to comment further.

Question 9. If a railroad is not earning adequate revenues, is this sufficient justification for a railroad to charge any rate it wishes to a captive coal shipper?

Answer. No, it is not a sufficient justification. It is, however, one important factor in determining rate reasonableness on captive traffic.

Question 10. To what extent should the ICC take into account the railroad's cost of service in determining a maximum reasonable rate?

Answer. Cost of service is certainly another important factor in setting maximum reasonable rates. In arriving at a standard for maximum reasonable rates, the Commission will be required to decide the relative weight to be given to this and other relevant factors.

Question 11. Do you agree that national energy goals should be taken into account in setting maximum railroad rates? How would you accomplish this result?

Answer. Yes, I do agree that national energy goals should be taken into account in setting maximum railroad rates. I understand that the Conference Report on the Staggers Act contains a clear statement of congressional intent on this issue. If confirmed, I will seek to implement this directive consistent with other statutory requirements. I believe that my experience in the oil and gas industries and my prior service in the Department of Interior will prove to be of value in this area.

Question 12. Do you believe the railroads should be required to produce the evidence necessary to enable the Commission to make the determinations required by the Long-Cannon criteria?

Answer. A complaining shipper usually does not possess specific information concerning a rail carrier's pricing practices and traffic mix. For this reason, it is necessary that reasonable discovery requests be granted. Although deciding which discovery requests are "reasonable" can be a difficult process, I will, if confirmed, strive to ensure that shippers have access to relevant information.

Question 13. Have you ever reviewed the Commission's proposed decision in Ex Parte No. 393 (Sub-No. 1), served March 9, 1983?

a. If "yes", do you believe the Commission's proposed use of "current cost" accounting would produce accurate, reliable information?

b. If yes, why?

Answer. I voted to issue the notice in Ex Parte No. 393 (Sub-No. 1) which included a proposal to use data adjusted for inflation. This is a very technical area, and I understand it is also a matter of some controversy within the accounting profession. It will be necessary for me to review the comments submitted in response to the proposal before I can reach a position on its utility.

Question 14. Does it appear to you that the major coal hauling railroads are financially unhealthy?

a. If "Yes", explain.

b. If "no", do you believe the ICC's conclusion that no major railroad is earning adequate revenues is correct?

Answer. It does not appear to me that the major coal hauling railroads are "unhealthy" at the present time. However, revenue inadequacy under the Commission's current standard and the term "unhealthy" are not necessarily synonymous. It is my understanding that the current standard is intended to deal with the long-term condition of the railroad industry. Capital shortfalls which led in part to passage of reform legislation in 1976 and 1980 will not be made up immediately. Any Commission standard for revenue inadequacy must reflect this fact.

Question 15. Should multiple indicators of financial health be used to determine if the railroads are earning adequate revenues?

a. If "yes", do you agree that these indicators should include bond ratings and return on shareholders' equity?

b. If "no", what is your justification for use of a single standard?

Answer. Evaluation of a rail carrier's financial health is a complex undertaking. Numerous indicators are available to financial analysts. I am aware that the Commission uses a single standard for its determination. The issue of whether use of a single standard is appropriate was never squarely presented during my earlier term as a Commissioner. Further study would be necessary before I could reach a definitive position on this issue.

Question 16. Now that the Railroad Accounting Principles Board has been reauthorized, do you believe the ICC should defer implementing the Uniform Rail Costing System until the Board has had an opportunity to consider this system and make recommendations to the Commission?

Answer. I am aware that Congress is considering legislation which would direct the ICC to defer implementation of the Uniform Rail Costing System until the Rail Accounting Principles Board has had an opportunity to review it. I do not oppose this legislation. If the Commission is directed to defer implementation, however, I hope that any review by the Board would not delay some action on URCS indefinitely.

Question 17. Do you believe that the ICC should take into account railroad productivity in calculating the Rail Cost Adjustment Factor?

Answer. I understand that use of a productivity adjustment in development of the Rail Cost Adjustment Factor is currently under consideration by the Commission in Ex Parte No. 290 (Sub-No. 4). Because I may be called upon to vote in this proceeding, I prefer not to comment on the merits of the issue. I can state that any productivity measure must be carefully constructed so as to accurately track inflation without overadjusting for railroad productivity gains. I do not underestimate the difficulty of this task.

Question 18. Senator Danforth has recently introduced a Joint Resolution, on behalf of a number of Senators including myself, pointing out some of the problems with the ICC's implementation of the Staggers Rail Act. It addresses such matters as the financial indicators used in determining rail revenue adequacy; the use of product and geographic competition in market dominance determinations; the Commission's coal rate guidelines; and mandatory interchange and reciprocal switching. The Joint Resolution is intended to be a clear signal to the ICC and others that Con-

gress expects all the goals of the Staggers Act to be met, including protection for captive shippers.

If you are confirmed as a member of the Commission, would you heed this signal? Will you carry out the intent of this resolution?

Answer. In my first term at the Commission, I attempted to implement all the goals of the Staggers Act to the best of my understanding and ability. If the Joint Resolution passes, I would certainly heed its message in any future service on the Commission.

[The following information was subsequently received for the record:]

POST HEARING QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question. How did you come to be nominated for the ICC in the first place? Did you specifically seek out this job? Why?

Answer. I was contacted by the Secretary of Interior and asked if I would consider an appointment in the natural resource area? I declined the offer but did express interest in an Independent Agency appointment. The White House personnel office contacted me concerning a Democratic vacancy on the Interstate Commerce Commission, and the President subsequently nominated me to the position.

Question. After a career as an engineer and a geologist, why are you interested in the transportation industry?

Answer. Ten years of rig floor and oil hauling experience in Oklahoma oil fields, ten years of Government experience in oil and gas mobilization and Civil Defense, and foreign oil importation management and several years of corporate experience dealing with Government and Industry petroleum product bids—these experiences have taught me how absolutely vital the transportation industry is to our national security and industry as a whole. I am privileged to have been a Commissioner in the past and if confirmed, I would like to continue as a Commissioner in order to encourage and promote a healthy transportation industry.

Question. You responded to a pre-hearing question that you believe that your greatest accomplishment at the ICC during your 10-month tenure was "caring about the employees at the ICC." While I think this is admirable, I wonder if you might now tell me what your second greatest accomplishment was?

Answer. I believe my second major accomplishment is my voting record. During my tenure at the ICC, I approached each proceeding with a view toward implementing the congressional policies embodied in the applicable statutes and giving full and equitable consideration to the interests of all parties. In my opinion, my voting record reflects a thoughtful and balanced approach to my regulatory responsibilities. I worked diligently, spending long hours with no absences from the office except three days for an eye operation.

Question. In general, to what extent do you believe the government should be involved in the regulation of transportation? Do you believe the government, or the marketplace, is the better guarantor of good price and service options for shippers?

Answer. I believe the government should be involved in the regulation of transportation to the extent competitive forces are not present or are not sufficient to ensure an adequate and efficient national transportation system. Where these competitive forces are present, the marketplace is the best guarantor of good price and service options for shippers. Where these forces are absent, government regulations may be necessary.

Question. You noted in one of your responses to the questions from the Majority that you believe that "a sound transportation system can be achieved through the promotion of marketplace principles." In what ways do you believe greater reliance could be placed on the marketplace in:

- (a) the trucking industry;
- (b) the household goods industry;
- (c) the intercity bus industry; and
- (d) the railroad industry?

Answer. (a) In the trucking industry, greater reliance could be placed on the marketplace through legislative action to eliminate the public need standard for licensing motor carriers. I do not believe this requirement any longer serves a useful purpose.

(b) In the household goods industry, elimination of any regulations which are unnecessary for consumer protection would increase reliance on the marketplace. I understand the Commission is conducting such a review in Ex Parte No. MC-19 (Sub-No. 36).

(c) Because the Bus Regulatory Reform Act of 1982 became law less than two years ago, I believe it is premature to suggest major new initiatives at this time.

Careful implementation of the policies embodied in that legislation and examination of the effects of implementation may suggest the need for further deregulatory measures at a later date.

(d) The Commission's inability to date to develop a workable standard for maximum reasonable rates for captive shippers has created considerable uncertainty among shippers and carriers with respect to the direction of rate regulation. This uncertainty doubtless affects marketplace decisions in areas such as rail contracts. Adoption of a standard would decrease this uncertainty and allow the marketplace to function more effectively.

Question. In your response to pre-hearing questions from the Majority, you said the ICC should monitor the effects of unilateral cancellations of joint routes and joint rates by railroads. Do you believe the ICC should review such a cancellation at the time it is proposed by the railroad?

Answer. I do not favor a program of review for every cancellation of through routes and joint rates at the time it is proposed. Such a review program would not be possible since carriers, quite rightly in my opinion, are not required to file prejustification statements with cancellations. When I state that the Commission should monitor the effects of unilateral cancellations, I was referring to the Commission's responsibility to apprise itself generally of the competitive impact of carrier initiatives in such significant areas as joint rate cancellations. As I indicated previously, I cannot say at this time whether this impact can best be examined in a broad investigation or through Commission decisionmaking on individual contested cancellations.

Question. In what ways could the Commission further promote competition and encourage trucking companies to provide more innovative services? Do you think such Commission action would be desirable?

Answer. I certainly think such Commission action would be desirable. At this time, I cannot specify areas where the Commission should begin major new regulatory initiatives in the motor carrier area. However, I can state that the Commission's jurisdiction should be exercised so as to encourage the maximum degree of competition within the confines established in the Motor Carrier Act of 1980.

Question. You note in one of your responses to one of the pre-hearing questions from the Majority that predatory pricing is an unlikely pricing strategy in the trucking industry due to that industry's few non-regulatory barriers to entry.

(a) Specifically, what economic characteristics of the trucking industry do not lend themselves to predatory pricing activities?

(b) What do you believe are the remaining non-regulatory barriers to entry?

Answer. (a) The primary economic deterrent to predation in the motor carrier industry is ease of entry due to minimal requirements for both monetary resources and technical expertise. Most important, a comparatively small capital investment is necessary for a prospective carrier to begin operations or an established carrier to enter a new market. This is especially true of truckload transportation where start-up costs amount to little more than the down payment on a serviceable semi-trailer truck. Even in less-than-truckload (LTL) markets where a larger capital investment generally is necessary, an existing carrier can begin a new service using its existing facilities, thereby forestalling any initial increase in capital investment.

The second characteristic of the motor carrier industry which discourages predatory pricing is the relatively non-technical nature of motor carrier service. By comparison to most other industries, little specialized knowledge is required to initiate a trucking business and provide an adequate, competitive service. In light of these two economic factors, coupled with eased regulation of entry under the Motor Carrier Act of 1980, there is little prospect for an existing carrier ever to reap the benefits of predatory pricing by raising its rates to monopolistic levels after its competition has been forced out of business. The risk of renewed competition from new entrants is too great.

(b) While start-up costs do not represent a substantial impediment to new entrants into the truckload transportation market, they remain a significant barrier to initiation of LTL operations. LTL service calls for some sort of terminal and break-bulk facilities which substantially increase the capital requirements of a new carrier.

In addition to start-up costs, new motor carriers face the same competitive barriers that exist for any new business. New entrants must provide significantly lower rates and/or superior service to win shippers which have long-standing relationships with existing carriers.

Question. In your response to one of the pre-hearing questions from the Majority, you note that you do not believe the Motor Carrier Act of 1980 has resulted in increased concentration in the trucking industry because the number of carriers with

interstate authority has grown. To what extent, however, has the market share of the largest carriers grown since enactment of the 1980 Act?

Answer. I have been informed of an informal study performed by the Commission's Office of Transportation Analysis which shows that the market share of the ten largest motor carriers (based on their share of all motor common carrier revenues) increased less than one percent between 1979 and 1982. I believe this is the best evidence available at the Commission at this time.

Question. You stated in one of your responses to the Majority's pre-hearing questions that you have been analyzing the relationship between the production of domestic crude oil and the importation of foreign crude oil and petroleum products since moving back to your office at the Commission. Can the Committee obtain copies of any reports or papers you have prepared on these issues since your return to your Commission office?

Answer. An important aspect of my duties as Under Secretary of the Interior was to constantly monitor the ratio of domestic crude oil production to the importation of foreign crude oil and report these findings to the Secretary as they might affect our national security. Since my departure from the Department, I have reported this information to the Counselor to the Secretary of the Interior on a monthly basis. Written reports were not required but discussions were frequent.

Question.

(a) If confirmed what would you do to ensure that the members of the Commission work together better in the future?

(b) Do you believe the Commissioners should have open meetings?

(c) Do you believe all the Commissioners should have the same access to the agency's staff as the Chairman?

(d) Do you believe all the Commissioners should have a say about the ICC's agenda?

(e) When a member of the Commission is invited to testify before Congress, what views should that member present—the Commission's or his or her own views?

Answer. (a) If confirmed, I would make special efforts to encourage and facilitate a more friendly and cordial relationship among all the Commissioners, both new and old. Good relationships among people require that concerned persons "reach out" to others. I am a concerned person and am willing to make that extra effort to promote a more harmonious working atmosphere at the Commission.

(b) Yes, I do support open meetings, particularly for the more significant cases or policy decisions.

(c) Yes, I do believe all the Commissioners should have the same access to the agency's staff as the Chairman.

(d) Yes, I do believe all the Commissioners should have a say about the agency's agenda.

(e) Whenever a Commissioner is called to testify before the Congress he should make clear to Congress the position taken by the majority of the Commission, and any areas where he disagrees with the majority.

PAUL H. LAMBOLEY

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question 1. Why do you think you are qualified to serve as an ICC Commissioner? What do you hope to accomplish as a Commissioner?

Answer. As a lawyer with 16 years active practice in judicial, administrative and legislative forums, both state and federal, coupled with direct participation in balancing interests in decisions at State Supreme Court and trial court levels, I feel I am qualified to serve as a Commissioner.

As a Commissioner, I would seek to implement national transportation policy consistent with the legislative intent and will of Congress as expressed in its statutory enactments. In so doing, I would hope to conscientiously balance interests of consumers, shippers and carriers to promote and maintain adequate, efficient and economical transportation system(s) and service(s) by encouraging non-discriminatory, competitive business practices, productivity, profitability and employment opportunities.

Question 2. How would you characterize your regulatory philosophy with respect to transportation issues?

Answer. My approach to regulatory issues and actions will involve evaluation of factual records; independent identification and analysis of key issues and applicable law. On this basis and in the context of transportation policy guidance from Congress, I would form my views as to whether and to what extent government participation is appropriate to balance the respective consumer, shipper and carrier

interest(s) operating in the marketplace and recognizing that such other factors as safety, employment, energy resources and environmental impact may likewise require consideration.

It is my view that the dynamics of the marketplace and its economics often require exploration of new methods and approaches to transportation issues which, upon evaluation by the Commission, may suggest legislative action. In such instances, I would hope to join with other Commissioners in recommending specific action to Congress.

Question 3. The Motor Carrier Act of 1980 eased entry standards for motor carriers of freight. In your opinion, has the ICC been too restrictive, too liberal, or about right in its implementation of motor carrier entry policy?

Answer. Without a more detailed evaluation of ICC decisions on entry, I would observe that the Motor Carrier Act expresses Congressional policy and guidelines to ease entry, and I would expect and assume that Commission decisions should be consistent with this policy.

Question 4. In your view, on what factors should entry regulation for motor carriers of freight be based? Do you believe carriers should be required to meet any standards beyond a showing of safety fitness and insurance?

Answer. In my view, Congress in the Motor Carrier Act of 1980 has made clear its intention to remove regulatory barriers that inhibit market entry, and in so doing has stated criteria for entry. I do not regard the stated criteria and the underlying policy to present impediments to the entry of a willing applicant able to demonstrate safety and insurance responsibility. I intend to reach decisions consistent with that policy and criteria. These statements should not be an impediment to the entry of a willing applicant able to demonstrate safety and insurance responsibilities.

Question 5. Price discounting has been pervasive in the trucking industry since enactment of the Motor Carrier Act of 1980. Do you view this as a favorable or unfavorable outcome of that Act?

Answer. The Motor Carrier Act of 1980 seeks to promote competitive and efficient transportation by easing entry and allowing variety of quality and price options. Competitive pricing is a natural and healthy outgrowth of the Act as carriers price their services to attract new business or to maintain present shipper customers and should ultimately and favorably affect consumers as well.

Question 6. Do you believe that trucking companies are engaging in predatory pricing practices? Do you believe the ICC's 1983 examination of predatory and discriminatory price (MC-166) adequately explored this issue?

Answer. I have no evidence upon which to form a belief that motor carriers are engaging in predatory pricing practices, or that the Commission's report in Ex Parte No. MC-166 did not adequately explore this issue. Of course, as a Commissioner I will evaluate any complaints of predation filed with the Commission.

Question 7. If, in fact, a carrier engages in predatory or discriminatory pricing, should that activity be considered illegal?

Answer. It is clear from the statute and legislative history that the Commission's authority in the area of discrimination and predatory practices has not changed with passage of the Motor Carrier Act. Predatory pricing is, and should be, illegal. Likewise, unreasonable rate discrimination is, and should be, unlawful.

Question 8. Do you believe the ICC should have any authority over mergers between motor carriers of property?

Answer. I understand that the Commission has a pending rulemaking proceeding, Ex Parte No. MC-55 (Sub-No. 57), in which it is considering the extent to which the exemption provisions of Section 21(b) of the Bus Act could be implemented to reduce the Commission's case-by-case scrutiny of mergers between motor carriers of property. An open Commission conference on this proceeding has been scheduled for September. I intend to review the issue and record thoroughly before taking a position on this question as a Commissioner.

Question 9. Do you believe the Motor Carrier Act of 1980 has resulted in increased concentration in the trucking industry? In your view, would total deregulation lead to market domination by only a few carriers?

Answer. I have no basis for believing that the Motor Carrier Act of 1980 has resulted in increased concentration in any segment of the trucking industry; nor do I have evidence on which to base a conclusion that total deregulation would lead to market domination by a few carriers, particularly if ease of entry proves effective in stimulating healthy competition to the benefit of all consumers and shippers.

Question 10. Do you believe collective ratemaking in the trucking industry serves any useful purpose? If the industry were to be deregulated, should the antitrust immunity for collective ratemaking be retained or abolished?

Answer. The Commission presently is considering (in Ex Parte No. MC-172) the question whether to administratively remove a portion, or all, of the antitrust immunity for collective ratemaking in the trucking industry. I understand an open conference is scheduled for next week to consider the issues presented in that proceeding. Depending on the Commission vote, I may be able to participate in this proceeding at a later time. Accordingly, I would like to evaluate the record and report of the Study Commission before I come to a conclusion as to the extent to which collective ratemaking serves useful purposes.

Moreover, I have not have the opportunity to review and evaluate the report of the Ratemaking Study Commission which will be an important consideration in formulating my opinion.

Question 11. To what extent do you believe the ICC has the authority to further deregulate the trucking industry through administrative action?

Answer. As this time, I can only state that as a Commissioner I will actively explore areas in which Congressional goals of the Motor Carrier Act can be accomplished by the Commission without further legislation.

Question 12. If the trucking industry were to be deregulated, do you believe any type of labor protection provision, beyond what is currently in the 1980 Act, would be necessary?

Answer. In considering additional legislation deregulating the trucking industry, Congress should, and no doubt will, evaluate the potential impact on employment along with the effect on consumers, impact on employment along with the effect on consumers, shippers, receivers and carriers. One would have to take a hard look at the facts to determine whether the Motor Carrier Act provisions granting the Secretary of Labor certain limited prerogatives in this area have had any effect and whether specific legislation involving labor protection would be appropriate.

Question 13. What impact do you think the Motor Carrier Act of 1980 has had on trucking service to small communities? What effect do you think further deregulation of trucks would have on such service?

Answer. Maintenance of service to small shippers and small communities is expressly cited as a goal of our National Transportation Policy. I have no evidence from which to conclude that there has in general been deterioration of service to small shippers and communities as a result of the Motor Carrier Act. A study performed by the Commission's Office of Transportation Analysis states that, by and large, there has been no change in service to small communities since 1980. I understand that these results, which were compiled in 1981 and 1982, have recently been updated by the Department of Transportation. Without review of data and evaluation of entry, I cannot conclude there would be significant change in effect.

I have asked for a copy of these reports, as well as current reports of the Commission's field offices, for my review.

Question 14. Do you believe there is any need for continued regulation of the trucking industry?

Answer. It is the Commission's duty to implement the will of Congress and to monitor continuously the impact of its regulatory activities. The Commission's current actions should be designed to enhance competition and efficiency in the transportation industry and, where appropriate, to suggest legislative actions which would facilitate Congressional policy. Before recommending which aspects, if any, of economic regulation of trucking should be maintained, or any modification of existing statutes, I want to thoroughly evaluate the issues from the perspective of my responsibilities as a Commissioner.

Question 15. In your view, do you believe intrastate regulation affecting interstate trucking companies should be preempted? Do you believe that such State regulations create problems for interstate carriers?

Answer. In balancing Federal-State relations involving preemption questions in which States do not have an overriding public interest and concern, the U.S. Supreme Court decisions generally favor Federal preemption where State action is found to unduly or adversely burden interstate commerce requiring a uniform policy application.

In my view, the Supreme Court's applied criteria properly addresses the balancing of Federal-State interests. There may be instances where State regulation may, in fact, cause problems for interstate carriers but, without further review, I cannot say which regulations, and what, if any, remedies may be appropriate within the context of ICC jurisdiction.

Question 16. In your view, is the Staggers Rail Act of 1980 working well?

Answer. The Staggers Act declares a public purpose which, among other things, seeks to reform and remove unnecessary regulation so as to foster healthy competition, a constructive economic environment for shippers and carriers and adequate

revenue for carriers. Implementation of the Act should allow a constructive evolution and modernization of the rail industry.

Question 17. Do you believe the ICC has properly implemented the Staggers Act?

Answer. I am not prepared to comment on prior Commission decisions, but am aware that there are several pending cases directly relating to implementation of the Staggers Act and involving a variety of significant issues.

I intend to study and evaluate the issues and record in those cases to determine what action is appropriate under the Act.

Question 18. To the extent the ICC has been criticized for not giving sufficient emphasis to the Staggers Act's goal of protecting captive shippers, do you believe legislation is required to change this?

Answer. If all of the purposes and policies of the Staggers Act are to be properly implemented, it may be appropriate for affirmative Commission action in situations presenting problems involving truly captive shippers.

At this time, I am not prepared to say that further legislative action is necessary to effect Congressional policies set forth in the Staggers Act.

Question 19. The ICC's proposed guidelines for determining maximum allowable coal rates are still pending. The guidelines have been criticized, because some believe they would not actually act as constraints on coal rates. Do you believe these guidelines should be modified in view of this criticism? Do you believe that the guidelines should continue to apply the concept of "differential pricing"?

Answer. I am aware of a pending case, Ex Parte No. 347, in which this issue is before the Commission. I have asked for the record and all related materials for review and analysis and intend to form an opinion based on the record and arguments in that case.

Question 20. The ICC has been criticized for not carefully reviewing the cancellation by railroads of through routes, joint rates, and reciprocal switching agreements. Some shippers and competing rail carriers believe such cancellations seriously threaten competition. Do you believe this is an area where the ICC should play a more active role? Does this area require statutory revisions?

Answer. Again, as stated in response to Question Number 17, if all of the purposes and policies of the Staggers Act are to be properly implemented, there may be a basis for affirmative Commission action to promote those policies in certain circumstances.

At this time, I am not prepared to say that additional legislation is necessary to accomplish the announced goals of the Staggers Act.

Question 21. The Staggers Act legalized contracts for rail service (40 U.S.C. 10713). Do you have any problems with the ICC's implementation of this provision?

Answer. It is my understanding that an Appeals Court has remanded a case to the Commission bearing on this issue.

I have not had the opportunity to review the Court's decision, the earlier Commission decision and record nor the recently released interim discovery rules concerning rail contracts, all of which seems appropriate and necessary to the formation of a considered opinion.

Question 22. What is your position with regard to the imposition of conditions in rail merger cases?

Answer. I understand there is a case now pending before the Commission concerning this issue. I have not had an opportunity to review the record or discuss the case.

It is my general view that conditions should be considered appropriate only when required in the circumstances of a particular case to safeguard the purposes and policies of the Act.

Question 23. In light of the ICC's increasingly limited budget, the agency clearly must make the best use of its resources. What do you see as the agency's top priorities? Please identify areas you believe the ICC should not be involved in, or in which its efforts should be materially reduced. In your opinion, may the agency discontinue or reduce these activities on its own, or must Congress act to relieve the public of this unneeded regulation?

Answer. I favor allocation of resources according to priorities, including the meeting of statutory deadlines. As a Commissioner, I expect to actively participate in establishing priorities and I will look for opportunities to reduce unnecessary regulatory action which is inconsistent with the National Transportation Policy.

Question 24. How well do you believe the Household Goods Transportation Act of 1980 is working? Do you believe any changes to that Act would be beneficial?

Answer. I understand the Commission's Office of Transportation Analysis is conducting a study to determine the impact of the Act on movers and shippers. I will be very interested in the results of that study and believe it would be appropriate to

wait for the results before offering a more definite statement on the success of the Act or the need for change.

In addition, I understand that the Commission is conducting a review of its rules applicable to movers in response to a petition filed by the American Movers' Conference. As Commissioner, I intend to participate in that review and would defer further comment pending its completion.

Question 25. Do you believe the Department of Defense should be required to adhere to ICC-established policies and procedures with respect to its household goods shipments?

Answer. I would like to hear the views of the various parties interested in this question. It may very well be that a dialogue involving all interested parties would serve a useful purpose.

Question 26. The Bus Regulatory Reform Act of 1982 preempted the authority of State regulatory commissions in certain areas. Do you believe this preemption is justified or do you believe States should have more authority over interstate bus companies operating within their boundaries?

Answer. I believe that Congress has attempted to achieve a balance between Federal-State interests through the preemption provision in the Bus Act.

I have no evidence to believe this Congressional action was not justified or that modification of this provision is presently appropriate.

Question 27. In your view, has the ICC correctly implemented the Bus Regulatory Reform Act of 1982?

Answer. The Commission's objectives should be consistent with the Act so as to allow carriers to adjust readily to changing market demands and the diverse requirements of the traveling public and to maximize the opportunity for carrier decision making concerning service and price offerings within the context of Congressional transportation policy.

A study report mandated by the 1982 Act is pending which I intend to review carefully.

Question 28. Do you believe antitrust immunity for collective ratemaking is needed in the intercity bus industry? If so, for what reasons?

Answer. This question is the subject of a recent report by the Motor Carrier Rate-making Study Commission. I am now reviewing the Report, and I will reserve final judgment on this issue until I am able to complete my analysis of the Study Commission Report.

Question 29. The 1982 Bus Act provided a moratorium on entry into the United States by Canadian and Mexican motor carriers. President Reagan lifted the moratorium with respect to Canada, but it remains in place for Mexico. Do you believe entry by foreign carriers into this country is a serious problem? In your view, are U.S.-based carriers discriminated against by Canada or Mexico? Do you believe any action should be taken by the ICC, beyond its earlier investigation of this issue, to address this concern?

Answer. Entry of foreign carriers into the U.S. market and entry of U.S. carriers into foreign markets have obvious implications to the movement of international commerce. I am aware that the Commission has a responsibility to monitor treatment of U.S. carriers in neighboring jurisdictions. In this regard, there is a continuing moratorium involving Mexican-owned or controlled carriers.

I know that in other transportation related matters, joint U.S.-Canadian conferences were held and that various public and private parties participated in constructive discussions. Where there is a potential for constructive progress, I believe such forums with neighboring countries could serve a useful purpose.

I have requested the record and report of the ICC's earlier investigation for my review.

Question 30. The feud between the current ICC Commissioners has been widely publicized. At issue are questions of regulatory philosophy, agency management, staff access, open meetings, representation of Commission views, and personality. Unfortunately, the feud has undermined the confidence of the public and Congress in ICC decision making. If confirmed, what do you think you can do to help address these questions and restore confidence in the agency?

Answer. I firmly believe a collegial attitude should prevail among members of the Commission. In short, harmonious working relationships are essential.

Question 31. What has been the nature of your past and current experience with the International Brotherhood of Teamsters? When did you last speak to a Teamster officer? What was the nature of that conversation?

Answer. At the outset, I wish to make clear that, as a Commissioner, I intend to, can and will act independent of any prior association of acquaintanceship. This is a primary obligation of a Commissioner.

During the past ten years, I have represented more than 30 labor organizations, including Teamster Local 533 (Reno). These organizations are located throughout the State of Nevada.

In connection with my representation of Local 533, I appeared in proceedings before the NRB, courts, grievance boards and in arbitration. This representation has primarily involved labor relation matters. I have also advised the Local regarding business matters such as auto leases, property damage claims and eminent domain cases. I last spoke with officers and business agents of Local 533 on Thursday, July 26, at an Executive Board meeting concerning hiring hall procedures and related complaint, and with the Secretary-Treasurer of that Local by phone July 27 regarding a discharge of arbitration.

I have been associated as local counsel in Nevada when the International Brotherhood of Teamsters has been joined or named as a party defendant in Nevada courts. The last such instance occurred approximately four or five years ago.

On occasion, I have spoken with counsel for the Western Conference of Teamsters and/or the International regarding problems of Local 533 in a broad multi-union or similar setting.

Most recently, I spoke with WCT counsel on July 26 regarding NLRB proceedings and I last spoke with IBT counsel some time last Summer or Fall regarding bankruptcy proceedings to which Local 533 was a parity creditor.

Question 32. How long have you known ICC Chairman Reese Taylor?

Answer. I have been acquainted with Reese Taylor for about ten years. Both Mr. Taylor and I practiced law in the Reno-Carson City area. I represented employee organizations which had labor disputes with employers represented by Mr. Taylor. This occurred on at least two or three occasions.

Question 33. Have you ever had any business connection with current or former members of the ICC?

Answer. No.

Question 34. What experience have you had in the transportation area?

Answer. My law practice has been primarily labor relations and associated problems involving employers in various industries, including transportation. I have been involved in a variety of matters such as safety, licensure, authority rights, trust funds and bankruptcy proceedings in relation to transportation industry employers.

Question 35. What experience have you had with regulated industries?

Answer. While primarily engaged in labor relation matters in various industries, I have been involved with employers in government regulated settings concerning construction, public utilities, environment, energy, EEO, DOL/IRS and antitrust.

QUESTION OF SENATOR PRESSLER AND THE ANSWER THERETO

Question. Earlier I asked whether you could foresee a specific circumstance in which you would require a railroad or other common carrier to continue operating in an area, even though it is losing money (but more than making up the difference from its operating authority in another area) if it is demonstrated to be in the public interest. I believe the answer was in the affirmative.

To be a little more specific, let me use a recent railroad abandonment case in South Dakota in which the ICC—by a two to two vote—upheld the Administrative Law Judge's (ALJ) recommendation to deny the Chicago and North Western Railroad's request to abandon the 165-mile line between Ft. Pierre and Rapid City, South Dakota.

The strong public interest in maintaining operations of that line was one of the major reasons for requiring the railroad to continue operations, although they said they were losing money.

Would you have agreed with the ALJ?

Answer. I can affirm the general proposition that community interests are essential considerations to achieve an appropriate balance in abandonment cases.

However, with respect to the specific case referred to, I have not reviewed the record and, with the possibility that the case may yet be subject to consideration by the commission in proceedings in which I may participate, I respectfully reserve further comment on the case.

QUESTION OF SENATOR GORTON AND THE ANSWER THERETO

Question. In May, 1983 the ICC issued an order deregulating the rates for commodities transported on boxcars. Along with the deregulatory order, however, the Commission issued two new regulations substantially altering the traditional system

of car hire charges. My questions for the nominees relate to these new car hire regulations which only recently were reversed and remanded to the Commission by the Federal Court of Appeals.

What concerns me most about the Commission's new car hire regulations is the anticompetitive implications for small railroads. Many of the nation's Class III railroads—especially these in the Northwest—originate traffic destined for the Northeast region. In most instances the Class III railroads' sole connection is with a dominant trunk line carrier. As the Court observed, the Commission's new rules "placed significant bargaining weapons in the arsenal of the destination carrier . . . and simultaneously deprived the originating carrier of the benefits" it could receive under a truly deregulated market. Do you share this concern? If not, in your opinion what protections are afforded the small originating carrier under the Commission's new boxcar rules? The Court further expressed doubt that the mere existence of the antitrust laws satisfies the Commission's statutory burden of making a finding that large carriers will not try to drive Class III railroads from providing service over efficient routes. Do you agree?

Would you support elimination of regulations relating to mandatory interchange and the rail common carrier obligation? Please explain.

The U.S. Court of Appeals reversed and remanded the ICC's decision in *Ex Parte 346* (Sub. No. 8)—the so called boxcar deregulation decision. What action would you recommend that the ICC take with respect to boxcar regulation in view of the Court's order? Would you support a total exemption of all boxcar traffic from regulation? Would you support the deregulation of other types of rail freight cars?

Answer. The specific issues posed by this question could come before me for action as a Commissioner either on remand or on the question of seeking further review; accordingly, I would like to reserve specific comment.

I can, however, state that I share the concern outlined in the question. I can further state my agreement with the notion that mere existence of antitrust laws may not be satisfactory as there is often disparate and disproportionate balance of private sector resources in the marketplace to affect appropriate antitrust remedial action. The "private attorneys general" concept may be imperfect for a variety of reasons.

The potential emergence of non-competitive rail traffic lanes due to gateway closings or other interline problems balanced against adequate revenues and maximum efficiency of rail carriers raise singularly significant issues requiring thorough study and analysis.

I note that Congress has seen fit to continue rail common carrier obligations under the Act.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question 1. Democratic members continue to be concerned that true Democrats are nominated for Democratic vacancies at independent agencies. Would you please elaborate on your Democratic credentials?

Answer. I have served as Democratic County Chair, State Chair and member of the Democratic National Committee and DNC Alumni Committee.

I have contributed to campaigns of various local, State and national candidates, as well as county, State and national Democratic party organizations.

I have enjoyed working relationships with Chairmen Strauss and Manett.

Question 2. It has been almost two years since you were first nominated for a democratic seat at the ICC. Some have wondered why you have continued to seek appointment to the Commission over such a long period. Why do you want to be an ICC Commissioner? What do you think you would bring to the Commission?

Answer. The confirmation process has indeed covered a significant period of time following nomination. Nevertheless, I remain enthusiastic over the prospects of serving as Commissioner for the reasons that this agency currently has economic regulatory responsibility over the nation's surface transportation interests upon which the free flow of goods and services in domestic and international commerce depends, and to which activity a singularly significant percentage of GNP is attributable.

In my view, the National Transportation Policy is an integral part of our nation's economic policy. The dynamics of the transportation marketplace and responsibility for careful consideration in balancing of various interests consistent with Congressional policies would be my concerns as Commissioner.

Commission action has significant impact on the continuing evolution and modernization of surface transportation system(s) and service(s).

Question 3. As you know, the ICC has an important responsibility in implementing the various transportation regulatory reform bills passed by Congress over the last several years. In this regard, are there particular issues which you would like to pursue if confirmed as Commissioner?

Answer. I have formed no opinion that any particular area of transportation policy ought to be the subject or focus of special attention. As Commissioner, I intend to broadly consider that all issues before the Commission are important, but anticipate that certain matters may properly call for priority consideration and decision.

Question 4. Your background indicates experience in the field of labor law. To what extent have you had any experience in the field of transportation and its regulation? Why do you think you are qualified to be an ICC Commissioner? Given your prior experience, what is your perspective toward the role of independent regulatory agencies, and the ICC in particular?

Answer. I have had a wide variety of experience in the various aspects of governmental regulation and administrative law in employment areas such as NLRB, EEO, DOL, IRS, and OSHA, as well as considerable experience in a variety of government regulated or impacted activities in construction, public utilities, energy, environment, and transportation involving corporations, securities and antitrust.

In addition to employee management issues, I have dealt with safety, licensure, authority rights, trust funds and bankruptcy issues in relation to transportation industry employers.

The statement of my attitude, interest and experience in response to Question No. 2 summarizes why I feel I am qualified to serve as a Commissioner.

My opinion concerning regulatory agencies, forged by my experiences, is not unlike that of Congressional findings upon which recent transportation legislation was based. Burdensome governmental regulatory practices are unwarranted and unjustified. They can be protectionist, inhibiting, non-productive, and non-competitive and can be artificial in relation to the realities and dynamics of the circumstances in which they operate. There are, however, regulations necessary and appropriate to ensure access, outreach, fairness and non-discriminatory treatment and designed to stimulate production, competition, profitability and efficiency.

Specifically regarding the ICC, my sense is that Congress has found both positive and negative regulatory influence by the Commission, and has recently adopted statutory policies designed to remove or modify regulations which lack justification in whole or in part.

Question 5. The ICC has been criticized for not fully exercising the statutory authority it has been given under the various regulatory reform measures. Some groups claim that the ICC has not provided the regulatory protection intended under those acts. Others by contrast claim that the ICC has not fully used its powers to further deregulate the transportation industry where appropriate. How would you characterize the past actions of the Commission in this regard?

Answer. I have not sufficiently analyzed past actions of the Commission to fairly respond to this question. However, I would expect, and assume, Commission decisions would and should be consistent with all of the purposes and policies of Congress expressed in various transportation statutes.

Question 6. Concerns have been raised that your labor experience will greatly, and perhaps inappropriately, influence your conduct at the ICC if confirmed as Commissioner. How do you respond to this concern? How will your prior background affect the positions that you might take as Commissioner?

Answer. To this point, I can simply say that, as a Commissioner, I intend to, I can and I will act independent of my prior associations, relationships or acquaintances. This is a fundamental obligation of a Commissioner.

Question 7. As you are probably aware, the ICC has been severely criticized for what could be termed its inability to function effectively, and without unnecessary dissention, to resolve the important transportation issues facing it. What is your perception of the problems at the Commission and among the Commissioners? What would you propose to ensure that the Commissioners work together toward constructive approaches to the implementation of transportation policy as intended by Congress.

Answer. I firmly believe that a collegial attitude and harmonious working relations among Commissioners are essential, not only for Commission function, but necessary for public confidence and credibility as well.

Question 8. With particular respect to the Staggers Rail Act, various groups have raised concerns that the Commission has not exercised its jurisdictional authority to protect captive traffic as was intended by the Act, nor to preserve competition where necessary. Are these concerns well-founded?

Answer. Concerns suggesting that the Commission has not exercised its jurisdiction to protect shippers of captive traffic as intended by the Staggers Rail Act, nor preserved competition where necessary, merit attention. In the Staggers Act, Congress sought to balance the needs of railroads to achieve revenue adequacy and the necessity to protect captive shippers. If, after determining that a shipper is, based on the evidence of record in a given proceeding, in fact, captive, the appropriate protection envisioned by Congress must be provided.

Question 9. A concern has been raised that the Commission has abused its exemption authority under the Staggers Act. Do you believe that this authority has been abused. Are there legitimate areas that could be exempted from regulation under this provision?

Answer. Under the Staggers Act, the Commission should use its exemption authority in accordance with the Congressional criteria set forth in 49 U.S.C. 10505. As a Commissioner, I will apply that criteria to proceedings concerned with exemption of rail related activities.

Question 10. Certain groups have criticized the Commission for completely abdicating its responsibilities under the Motor Carrier Act to continue to regulate certain aspects of truck transportation. How do you view the ICC's activities under the Motor Carrier Act? Are there areas where the Commission should be regulating that it is not?

Answer. The ICC has been asked by the Motor Carrier Act to promote competition by easing entry for carriers and to allow price/service options to be controlled by market forces, as opposed to direct regulation of rates and practices. In carrying out its responsibilities, the Commission's actions should be in accord with the Congressional mandate set forth in the National Transportation Policy. At this time, I believe there may be areas where the Commission should initiate a new regulatory agenda concerning motor carriers. Situations may exist which present exceptions to the general rule that competition, instead of regulation, is to be the primary factor in the marketplace. As a Commissioner, I will fairly evaluate the record in any such cases brought before the Commission.

Question 11. It has been nearly two years since Congress passed the Bus Regulatory Reform Act. How would you assess the Commission's implementation of that Act? What has been the impact of that Act on the industry? Should the industry be completely deregulated?

Answer. The Commission's objectives should be consistent with the Act so as to allow carriers to adjust readily to changing market conditions and the diverse requirements of the traveling public and to maximize the opportunity for carrier decision-making concerning service and price offerings. A study report mandated by the 1982 Act is pending which I intend to review carefully.

Question 12. In recent months, the ICC has considered cases involving the combination of different types of transportation. How do you view the move toward intermodalism? To what extent can and should the Commission promote multimodal companies?

Answer. In the National Transportation Policy, Congress has emphasized that intermodalism is a goal that should be encouraged. The benefits of intermodalism include added competition, rationalized operations, improved and created efficiencies, and single- in lieu of joint-line service. Therefore, I would encourage intermodal innovation where appropriate in accordance with statutory policy.

Question 13. With the impending sunset of the Civil Aeronautics Board, what is your view of the future of the ICC? Should it be sunsetted, with remaining functions to be performed by an Executive Branch agency?

Answer. Before making a recommendation with regard to sunset, I would like to take a first-hand look at various issues in performing my responsibilities as an ICC Commissioner. Whatever may be the future or redefinition of the agency structure, I believe that the Commission has important responsibilities and functions in transportation evolution. A number of significant policy decisions are pending before the Commission. Under these circumstances, I have doubts concerning the near term wisdom of sunseting ICC functions. Additional study may be needed before reaching any decision that sunset may be appropriate.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS THERETO

Question 1. You indicate in your answers to questions from the Democratic Committee Members that you have no opinion on areas which might require special attention by the Commission, although you anticipate that there are certain matters that might call for priority consideration. Given the regulatory background which you mention that you have had, do you not have any ideas of your own as to what

issues the Commission might want to take a closer look at in its efforts to implement the reform measures passed in recent years?

Answer. I have no preconceived notions, disposition or agenda for my service as Commissioner. With perhaps too broad a brush over the respective transportation industries, I can say that I would like to study and examine issues relating to entry and exit, service, mode and price competition in small community markets, captive shipper—adequate revenue questions, as well as merger, abandonment, inter- and intramodal competition, coordination of federal/state regulation and, particularly passenger service and consumer impact issues, and certain commodity transportation issues related to energy, environment and international trade.

Question 2. You have indicated that with respect to the Motor Carrier Act there may be exceptions to the general rule that competition is the primary regulator. What do you perceive are exceptions? Is the ICC regulating in those areas now?

Answer. Lack of or inadequate market competition may create exceptions.

The Commission has a fact-finding responsibility regarding assessment of impact and effectiveness of present policy on service, quality and price options in variously sized markets served by motor carriers.

ICC Special Counsel should be used monitor and develop evidence and public interests for the record in proceedings before the Commission and as conduit for public input.

Additionally, ICC Regional Offices should be encouraged to gather and submit field information.

Question 3. You have indicated in your answers that you assume that the Commission is carrying out the intent of the Motor Carrier Act with respect to entry. How do you respond to the concerns raised that the ICC has relaxed entry far beyond what was originally intended?

Answer. In the MCA, Congress sought to ease entry, and to that end, has stated the criteria and guidelines for that purpose.

The Commission is obligated to act consistent with that guidance.

The concern suggested by the question merits attention by both the Commission and Congress and, if valid, remedial action may be warranted.

Question 4. In your answers you indicate that predatory and discriminatory pricing continue to be unlawful, and that ICC continues to have the authority to regulate in this area. Has the ICC adequately regulated this area?

Answer. This question requires a more detailed review of record in ICC proceedings than to which I have had an opportunity to make.

If predatory or unreasonable rate discrimination is demonstrated on the record, the Commission should take appropriate remedial action.

Question 5. You indicate that you would allocate the limited ICC budget among various priorities and that you would work to assess these priorities. Are there priorities which you personally would like to see established or maintained at the ICC?

Answer. While I cannot speak to present budget allocation, as a general proposition, the Commission's role in fact-finding and study, identification of enforcement priority and public interest outreach merit consideration in allocation of budget resources. The enterprise of the agency should be cost efficient and effective.

QUESTIONS OF SENATOR FORD AND THE ANSWERS THERETO

Question 1. The Interstate Commerce Act provides that the policy of the United States Government in regulating the railroad industry is to maintain reasonable rates where there is an absence of effective competition (49 U.S.C. 10101a(6)). What does this mean to you? In particular, in your view, should a freight shipment be regulated by the ICC in regard to rates and service provided when a single rail carrier represents the only practical source of transportation for part or all of the movement from origin to ultimate destination or to a river, lake, or coastal port for transshipment by water carrier? Isn't this a situation frequently faced by shippers of heavy bulk commodities such as coal, grain, fertilizers, chemicals, and ores?

Answer. In the Staggers Rail Act, Congress indicates that reasonable rates should be maintained for those shippers who have no feasible alternatives to rail service.

As to the described situation, rates for the shipment should be regulated if the rail carrier is found to have market dominance over the traffic. I believe each situation must be analyzed individually in the context of the facts.

Question 2. The critical Long-Cannon Amendment embodied in the 1980 Staggers Rail Act and now provided in the Interstate Commerce Act (49 U.S.C. 10707a(e)(2)(A)(B)(C)) seeks to minimize noncompensatory traffic, to maximize revenues from traffic that contributes only marginally to fixed costs, to consider the

impact of proposed rates or rate increases on attainment of national energy goals, and to determine whether one commodity is paying an unreasonable share of the carrier's revenues. How would you deal with such provisions in present law as they relate to the ICC's proposed coal rate guidelines which would allow rates to increase 15 percent yearly above inflation and in addition to claim that a rate is not unreasonably high if it is no more than what a coal shipper would pay to build and operate a railroad for the movement?

Answer. I am aware of the Long-Cannon Amendment intent. The present law appears to provide adequate direction. Consideration of this Amendment and related issues is now before the Commission in Ex Parte No. 347. I have not decided how these ought to be dealt with at this time. I must review the case and evaluate the record so that I will be able to make an informed judgment on these important issues. I am of the opinion that all purposes and policies of the Act should be operative considerations in Commission decisions.

Question 3. Do you believe that Congress intended that the ICC balance the revenue needs of the railroads against the need to protect captive shippers?

Answer. Yes. I believe Congress intended the ICC to balance the revenue needs of the railroads against the need to protect captive shippers. The changes brought about by the 4R Act and the Staggers Act establish changes in the regulatory environment which provide the railroad with greater economic freedom. Nevertheless, both Acts specifically require the Commission to balance needs of the carriers against those of the shipping community.

Question 4. Do you believe that the ICC has maintained this balance since October, 1980?

Answer. I am not prepared to comment on prior Commission decisions. I am aware there are several pending cases directly relating to implementation of the Staggers Act and involving a variety of significant issues. I intend to study and evaluate the issues and records in those cases to determine what action is appropriate under the Act.

Question 5. Have you analyzed the ICC's proposed decision in Ex Parte No. 347 (Sub-No. 1), served February 24, 1983? If so, do you agree with it?

Answer. I have not had the opportunity to carefully study the Commission's proposed guidelines for maximum rates. A determination as to whether the guidelines would achieve the objective requires careful analysis of the record. At this point, I have not been able to undertake such an analysis. Until I do, I must refrain from taking a position in this complex case. Since the proceeding is pending, I would not want to prejudge the case.

Question 6. Do you believe that railroads should be permitted to raise rates for a captive shipper until they reach the point where it would be cheaper for the shipper to build its own railroad?

Answer. The use of the stand-alone cost test or "build your own railroad" may be problematical. Since regulation is an attempt to emulate competition, the stand-alone cost concept may have merit. I believe the concept requires full consideration from both a theoretical and a practical perspective.

Question 7. What do you believe should be the Commission's rule in determining what is a maximum reasonable rate for a captive shipper of coal by rail?

Answer. Where the railroad has market dominance over the traffic, the Commission has jurisdiction to make a determination as to whether a rate exceeds a maximum reasonable level. Once a market dominance determination is made, I believe the Commission's role is, and should be, to determine whether the rate exceeds maximum reasonableness. The "captive shipper" question is a singularly important issue which I intend to study very seriously as a Commissioner.

Question 8. What are the factors that you believe should be considered in determining what is a maximum reasonable rate for a captive coal shipper?

Answer. I recognize that establishing maximum reasonable rates for captive shippers is an extremely complex problem which requires balancing conflicting interests and consideration of a multitude of factors. Based on my rather limited exposure to the issues which must be considered in establishing such a maximum rate policy, I cannot give a detailed list of factors which should be considered.

However, I believe that competitive earnings, management efficiency and cost are among the more important factors. Until I have evaluated the record in Ex Parte No. 347, I must confine my remarks to these more general factors and I do not believe I should comment in any greater detail.

Question 9. If a railroad is not earning adequate revenues, is this sufficient justification for a railroad to change any rate it wishes to a captive coal shipper?

Answer. Under the Staggers Rail Act, the Commission is required to assist carriers in achieving adequate revenue levels. However, the goal of revenue adequacy,

while important, is only one of the factors to be considered in accordance with the rail transportation policy. The Commission is also directed to maintain "reasonable" rates where there is an absence of effective competition. The ultimate decision as to whether a particular rate is reasonable would depend, I believe, on the specific facts in a given case, considered in the light of the statutory criteria and any general guidelines the Commission may establish.

Question 10. To what extent should the ICC take into account the railroad's cost of service in determining a maximum reasonable rate?

Answer. Cost of service certainly is a factor which should be considered in establishing maximum rates. However, as I have stated previously, there are other factors such as management efficiency, contribution to overall profitability and degree of captivity which should be considered as well. The weight to be given various factors is a matter which I intend to study and evaluate as Commissioner.

Question 11. Do you agree that national energy goals should be taken into account in setting maximum railroad rates? How would you accomplish this result?

Answer. I agree that national energy goals should be taken into account in setting maximum railroad rates.

The Staggers Act issues are extremely complex, requiring balancing of a number of factors. I intend to follow Congressional intent to the best of my ability, and to determine the weight of this issue on a case-by-case basis, consistent with statutory criteria and Commission guidelines. Until I have had an opportunity to study these issues in detail, I believe it would be premature to state specifically how I would implement Congressional policy in this area.

Question 12. Do you believe the railroads should be required to produce the evidence necessary to enable the Commission to make the determinations required by the Long-Cannon criteria?

Answer. At present, I am informed the Commission's rules require that evidence of the Long-Cannon factors be submitted by the party that bears the burden of proof in a given proceeding. This would require the carrier to submit the evidence in a Commission-instituted investigation, and the shipper to do so when a complaint is filed.

While I am familiar with the Long-Cannon criteria in general terms, I must become more knowledgeable in this area before I can comment in depth as to which party should bear the burden of producing particular evidence.

Question 13. Have you reviewed the Commission's proposed decision in Ex Parte No. 393 (Sub-No. 1), served March 9, 1983?

A. If "yes", do you believe the Commission's proposed use of "current cost" accounting would produce accurate, reliable information?

b. If yes, why?

Answer. No. I have asked for the record and intend to review the Commission's decision which seeks to revise the present standard for determining revenue adequacy. I am aware that the proposed revisions include the use of data adjusted for inflation. The specific revisions are highly technical and would require careful review before I could comment in detail on their merits. I am also aware of the arguments in the accounting profession over this unsettled issue. As indicated, I would have to study the proposal thoroughly and review the record before commenting on the accuracy or reliability of the information.

Question 14. Does it appear to you that the major coal hauling railroads are financially unhealthy?

a. If "yes", explain.

b. If "no", do you believe the ICC's conclusion that no major railroad is earning adequate revenues is correct?

Answer. Revenue inadequacy under the present standard and the label "unhealthy" may not be synonymous. The financial condition of the railroad industry appears to have improved significantly since passage of the Staggers Act. While the railroad industry may not be "unhealthy," I would not hazard an opinion at this time as to the health of individual carriers.

Question 15. Should multiple indicators of financial health be used to determine if the railroads are earning adequate revenues?

a. If "yes", do you agree that these indicators should include bond ratings and return on shareholders' equity?

b. If "no", what is your justification for use of a single standard?

Answer. The evaluation of a firm's financial condition is a complex matter. Generally, financial analysts use a myriad of financial indicators to assess the position of a company. Various ratios may be used by an analyst depending on the purpose and objective of the analysis. Without commenting on the use of any particular standard of approach, I believe that such factors as ability to attract capital, pay

dividends and reinvest in productive capacity are appropriate to an evaluation of the railroad industry.

Question 16. Now that the Railroad Accounting Principles Board has been reauthorized, do you believe the ICC should defer implementing the Uniform Rail Costing System until the Board has had an opportunity to consider this system and make recommendations to the Commission?

Answer. It is my understanding that the costing system has been under development for several years and has also been through a rulemaking process by the Commission. I hope that Congress will direct the Rail Accounting Principles Board to act expeditiously if implementation is to be deferred.

Question 17. Do you believe that the ICC should take into account railroad productivity in calculating the Rail Cost Adjustment Factor?

Answer. The use of a productivity adjustment in the development of the Rail Cost Adjustment Factor is both an important and difficult problem. The development of such a measure is being considered in Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures Productivity Adjustment*. I cannot comment on that proposal at this time because I am not yet familiar with the record.

Question 18. Senator Danforth has recently introduced a Joint Resolution, on behalf of a number of Senators including myself, pointing out some of the problems with the ICC's implementation of the Staggers Rail Act. It addresses such matters as the financial indicators used in determining rail revenue adequacy; the use of product and geographic competition in market dominance determinations; the Commission's coal rate guidelines; and mandatory interchange and reciprocal switching. The Joint Resolution is intended to be a clear signal to the ICC and others that Congress expects all the goals of the Staggers Act to be met, including protection for captive shippers.

If you are confirmed as a member of the Commission, would you heed this signal? Will you carry out the intent of this resolution?

Answer. I believe the Commission has an obligation to consider all of the goals of the Staggers Act, including protection for captive shippers. The matters addressed in the Danforth Resolution cover most of the important issues before the Commission. I intend to carefully study each of these issues before taking a position, but I can say at this time that I will always attempt to follow Congressional intent and direction.

ANDREW J. STRENIO, JR.

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

POST HEARING QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question. Have you ever discussed your nomination to the ICC with the Teamsters? If so, what was the nature of your discussions? Did you discuss trucking deregulation?

Answer. Following public announcement of my nomination, I was contacted by various parties, including representatives of rail carriers, motor carriers, bus lines, shippers, International Brotherhood of Teamsters and ICC practitioners.

All such contacts indicated an interest in the confirmation process; they were congratulatory in nature; and generally, callers offered to serve as background resources in regard to their particular industry expertise. Contact from the International Brotherhood of Teamsters, was along the the same lines. No substantive issues were discussed in any of these conversations.

I have not discussed regulatory philosophy, generally or specifically trucking deregulation, with the Teamsters.

Consistent with what I perceive as my obligation, I can and will carry out my responsibilities and make decisions as Commissioner independent of, and without regard to, my past affiliation, relation or association or like considerations.

Question. Have you discussed your nomination to the ICC with Chairman Taylor? If so, what was the nature of your discussions? Did you discuss your respective regulatory philosophies? Did you ever have a case before Mr. Taylor when he was Chairman of the Nevada Public Service Commission?

Answer. Following announcement of my nomination, a Legislative Affairs Officer of the Commission called to introduce himself, extend congratulations (including that of Chairman Taylor's) and inform me that he would report the status of confirmation proceedings and make ICC staff available to assist at the time of confirmation hearings.

Thereafter, while attending a funeral in Carson City, Nevada, Chairman Taylor and I personally exchanged congratulations, I noted my interest in serving and that I had no definite anticipations concerning confirmation proceedings. Chairman Taylor provided no specific information concerning the status of confirmation.

I have not discussed regulatory philosophy with Chairman Taylor, be it mine or his.

I did not have a case before the Nevada Public Service Commission while Mr. Taylor was Chairman.

Question. The term for which you are nominated expires on December 31, 1984. Has the President made a commitment to renominate you to the Commission?

Answer. I, of course, would hope to be renominated and serve for a full term beginning in January 1985. However, there has been no commitment regarding re-nomination.

Question. Do you still want this job? Why? Did you seek out this job? How did you come to be nominated?

Answer. I desire to serve as Commissioner.

My interest is predicated on the importance of transportation within the fabric of the nation's economy, the significance of policy issues within ICC jurisdiction and a genuine desire to serve and contribute.

Consideration and support for my nomination was a bilateral process involving both Senator Laxalt, and then-incumbent Senator Cannon.

Question. Have you ever read the Motor Carrier Act, Staggers Act, the Regulatory Reform Act, and their reports?

Answer. I have reviewed the Acts and the respective legislative reports, except for the Bus Regulatory Reform Act legislative report which I have asked for along with the Ratemaking Study Commission Reports.

I have not had the opportunity to fully consider the statutes in the context of actual, factual records or issues.

Question. You cite the National Transportation Policy often in answers to pre-hearing questions. Can you generally summarize it and indicate the degrees to which you do or don't agree to it.

Answer. The ICA, and each of the recent amendments, identify and itemize various Congressional findings and declarations of policy. The Commission is responsible for balanced implementation of all of these policies to the best of its ability. In my view, each Commissioner must reach decisions considering and consistent with each of the policies which may be applicable in any given case.

Question. In general, to what extent do you believe the government should be involved in the regulation of transportation? Do you believe the government, or the marketplace, is the better guarantor of good price and service options for shippers?

Answer. The dynamics and various components of the marketplace should provide the primary basis for establishing and maintaining service, and fostering the availability of quality and price options for carriers, shippers and consumers.

To the extent the marketplace does not fairly encompass operative factors necessary to provide adequate, efficient and reasonable transportation system(s) and service(s), governmental participation may be appropriate to stimulate, encourage and promote a fair balance of interests.

Question. You note in your response to one of the pre-hearing questions from the Majority that "the dynamics of the marketplace and its economics often require exploration of new methods and approaches to transportation issues". What does this mean?

Answer. Simply stated, my business experience has taught that once accepted methods, practices or approaches may no longer be applicable. Generally speaking, things have a life use; little is static, and re-evaluation of assumptions is appropriate.

The continuum in which business affairs undergo evolution and modernization likewise operates in the transportation industry as ideas and technology change. Experimentation is made, quality, service and price options will be an integral part of the continued development of transportation.

Question. In your response to one of the pre-hearing questions from the Majority, you note that you have no evidence upon which to form a belief that carries are engaging in predatory pricing practices. To what extent have you examined data relating to carriers' pricing activities since enactment of the Motor Carrier Act of 1980?

Answer. I am not aware of any specific study or review concerning "predatory" pricing and whether any such practices by motor carriers have taken place in the motor carrier segment of the industry since 1980. However, I have asked the Staff for any relevant information that may be available.

Question. You were asked prior to this hearing to what extent you believe the Commission has the authority to further deregulate the trucking industry through administrative action. You responded that you would actively explore areas in which the Commission can accomplish Congressional goals of the Motor Carrier Act

without further legislation. However, you did not tell us to what extent the Commission can administratively further deregulate the trucking industry. Could you please tell us now?

Answer. I have no preconceived disposition or views concerning the present framework of administrative regulation. I do favor removal of unwarranted and burdensome regulation. In that context, I would evaluate current ICC regulations and assumptions, and urge any changes which I deem consistent with the MCA.

Question. Do you believe there are any areas where antitrust immunity for collective ratemaking is needed in the intercity bus industry?

Answer. I have not had the opportunity to review the joint ratemaking study committee reports which I have asked for.

I am inclined to the general view that as economic regulation is diminished in the marketplace, need for the application of antitrust protection is enhanced.

Question. If confirmed, what would you do to ensure that the members of the Commission work together better in the future?

Answer. Certainly harmonious working relations are essential to Commission function as well as to public credibility and confidence.

Question. Do you believe the Commissioners should have open meetings?

Answer. Yes, I favor open, accessible and understandable agency action.

Question. Do you believe all the Commissioners should have the same access to the agency's staff as the Chairman?

Answer. Generally, yes, access to Staff information should be available and provided to all Commissioners on the same or an equal basis.

Question. Do you believe all the Commissioners should have a say about the ICC's agenda?

Answer. Generally, yes, Commissioner input to the Chairman on agenda items would seem appropriate.

Question. When a member of the Commission is invited to testify before Congress, what views should that member present—the Commission's or his or her own views?

Answer. If the Congressional invitation to appear is for the purpose of presenting the views of the Commission, to the extent there is consensus, the Commission view should be presented. To the extent there is not consensus, that fact should be noted, as well as identification of other points of view.

If the invitation to appear is for the purpose of presenting an individual point of view, the Commissioner should do so with the appropriate caveat.

[The following information was subsequently received for the record:]

Question 1. In your view, has the Interstate Commerce Commission (ICC) correctly implemented the Motor Carrier Act of 1980?

Answer. Let me note at the outset regarding my answers to all these questions that I can only give you my general impressions at this time based upon my observations of the ICC from outside that agency. While these are my current impressions, I have an open mind regarding all ICC issues. I fully intend to seek more information on these topics and to alter my initial views on them whenever warranted by additional facts.

Within this context, it is my view generally that the ICC has correctly implemented the Motor Carrier Act of 1980. Through the rulemaking process, the ICC has completed numerous proceedings intended to implement the will of Congress as expressed in the national transportation policy. I fully support the goals of the Act, which include meeting the needs of shippers, receivers, and consumers; allowing industry price flexibility; encouraging greater efficiency; and providing continued service to small communities. The Act was designed to ensure that reliable transportation services are available to the public at reasonable prices. If confirmed, I will seek to implement the provisions of the Act consistent with the goals set forth by Congress.

Question 2. Do you believe the Motor Carrier Act of 1980 is working well?

Answer. I do believe that the Motor Carrier Act of 1980 is working well overall as intended by Congress. The national transportation policy as expressed in that Act stresses the role of competition in place of regulation where feasible. I agree wholeheartedly with this policy that places primary reliance upon competition in order to yield the best results for carriers and shippers alike, bearing in mind that carefully crafted regulation may be necessary as an exception to the rule whenever competition is not feasible. It appears to date that this emphasis on competition has indeed

yielded anticipated benefits to both shippers and carriers in such forms as varied price and service options, rate flexibility, and eased entry.

Some concerns have been expressed that small shippers and small communities may be harmed by certain provisions of the Act. Although only a relatively short time has elapsed since passage of the Act, available data, including a study of deregulation in Florida and a study conducted by the Commission's Office of Transportation Analysis, indicates that there has not been a diminution of service and price options to small shippers and communities. As a member of the Commission, I would remain sensitive to this concern and closely monitor the effects of the legislation on the providers and users of transportation service.

Question 3. Do you believe there is any need for continued economic regulation of the trucking industry?

Answer. I do not believe that a need has been demonstrated for extensive economic regulation of the entire motor carrier industry. As previously noted, reliance on competition where feasible as required by the Motor Carrier Act appears to be the fundamentally correct approach. I know that arguments have been made that there is a need for Commission regulation in certain instances. I am sensitive to these concerns and would take appropriate steps should the Commission have specific evidence of harm in a particular area.

Question 4. Do you think the ICC has correctly implemented the Staggers Rail Act of 1980? In your view, is there any need for additional legislation in this area?

Answer. The goals of the Act are to permit railroads to improve their financial viability, reduce Federal regulation, and permit the marketplace to regulate rail service whenever possible in the interest of shippers, the industry, and the American public alike. I think the Interstate Commerce Commission has basically implemented the Staggers Rail Act in accordance with these goals set forth by Congress. I would note, however, that in many ways the questions presented in the rail area are analytically more difficult to resolve than those in the motor carrier area. Accordingly, I intend to review closely specific actions with an open mind in light of the complexities of rail regulation. I also understand that a number of rail issues are currently before the Commission and I will give them my full attention.

As to the question of whether there is a need for additional legislation in the rail area, I am aware of the diverse points of view expressed to Congress on this issue. I prefer at this time to reserve judgment on this important matter pending further study as one of my top priorities. It is my hope, though, that the ICC could exert leadership in the area sufficient to achieve a consensus that resort to legislation is unnecessary.

Question 5. In your view, is the Staggers Act working well?

Answer. In my view, the general emphasis on competition in the Staggers Rail Act of 1980 is the correct approach. Implementation of the Act has clearly had a beneficial impact on the financial viability of rail carriers. However, the impact of specific actions on captive shippers for whom there is no competitive option is also important. Serious concerns have been expressed about the effect of the Act on captive shippers. I am aware of these concerns and am of the opinion that they warrant careful attention. I would stress that we have not arrived at the end point of the regulatory process in transportation. There is much that can be done at the Commission in the way of "fine tuning" regulations implementing the Staggers Act as our knowledge about the results of these regulations increases.

Question 6. What impacts do you believe the Bus Regulatory Reform Act of 1982 has had on carriers and service provided to passengers?

Answer. Basically, the Bus Regulatory Reform Act of 1982 appears to have had a beneficial impact on carriers and service provided to passengers. Bus service involves a very mobile and relatively inexpensive form of capital unlikely to create the kinds of problems that may give rise to the need for more extensive regulation in some other areas.

The provisions for eased entry and exit should provide a strong incentive for new bus companies to enter markets that may be left by other carriers. However, as in other areas, it is important to pay close attention to concerns expressed by small communities that are dependent on bus service and are facing abandonments by existing carriers. If these communities were to lose vital service without the entry of new carriers offering service tailored to meet their transportation needs, then a problem would exist and solutions must be sought. One tool that may be employed to assist such small communities is the provision of subsidies, but I would support the exploration of all reasonable options if warranted by the existence of evidence of such a problem.

Question 7. The feud between the current ICC Commissioners has been widely publicized. At issue are questions of regulatory philosophy, agency management,

staff access, open meetings, representation of Commission views, and personality. Unfortunately, the feud has undermined the confidence of the public and Congress in ICC decisionmaking. If confirmed, what do you think you can do to help address these questions and restore confidence in the agency?

Answer. Because I have not been at the ICC during the time in question, to paraphrase Will Rogers, pretty much all I know about the situation is what I've read in the papers. I suspect that at least some reports have been greatly exaggerated, and am under the impression that whatever problems may exist have been getting better recently. Nonetheless, at a minimum, the perception is troubling, and one that I would devote substantial efforts to changing as part of a collegial body.

Since my nomination, I have spoken with each sitting Commissioner regarding their general approach to Commission business. Based on these talks and my respect for these people as individuals and Commissioners of the ICC, I am confident that we will successfully work together to carry out the mandate of Congress. I would also point out my experience at the Federal Trade Commission where I have been able to work together successfully with Commissioners of diverse philosophies and perspectives by establishing good working relationships based upon trust, fair dealing, and an openness to all ideas presented. I intend to take the same approach at the Interstate Commerce Commission, and hope I can contribute thereby to dispelling any negative perceptions. I completely support openness in Commission proceedings whenever possible and believe that this approach will also increase public confidence in the agency in the long-run.

Question 8. What do you hope to accomplish as an ICC Commissioner?

Answer. As an ICC Commissioner, I hope to accomplish several goals, among which, not necessarily in order of priority, are the following:

To make efforts to increase the morale of the staff at the Commission. Due to substantial reductions in staff in the last several years, morale at the agency is at a low point. Yet, in order to meet the important responsibilities Congress has placed upon the ICC, it is vital to attract and retain the best possible staff. I will focus on improving this situation so that the Commission will effectively fulfill its responsibilities;

To address in a thorough and fair manner the substantive questions facing the Commission in the rail area, such as maximum rate guidelines. My consideration of these issues will reflect the concerns of all parties, will be logical from both a legal and economic standpoint, and will be consistent with Congressional intent;

To determine more precisely how far the Commission has come in implementing the Motor Carrier, Staggers, and Bus Acts and the best way to further proceed. I will seek a detailed and accurate evaluation of the Commission's implementation of the Acts to assess the present regulatory situation and to help determine future directions; and

To assist the Commission in playing its important role in helping to form a consensus among users and providers of transportation service concerning the future course of transportation policy in the United States. I hope to contribute to restoring and building upon a cooperative spirit as we go forward and make regulatory adjustments in the transportation industry. The Commission is in a position to encourage this process and should be a positive and active participant. The Commission should act as a conscientious listener as well as a judicious decisionmaker. As a Commissioner, I will welcome the views of all participants in the transportation industry.

QUESTIONS OF SENATOR GORTON AND THE ANSWERS THERETO

Question 1. In May, 1983 the ICC issued an order deregulating the rates for commodities transported on boxcars. Along with the deregulatory order, however, the Commission issued two new regulations substantially altering the traditional system of car hire charges. My questions for the nominees relate to these new car hire regulations which only recently were reversed and remanded to the Commission by the Federal Court of Appeals.

What was the FTC's position in this proceeding? Are your own views consistent with the position taken by the FTC? Please explain where your views differ and the justification for your different point of view.

Answer. Regarding the FTC's position in the boxcar proceeding, I should first explain for clarification that my role in my position as a career civil servant was to coordinate the drafting of the staff comments and the submission of those comments to the Federal Trade Commissioners. It was my responsibility to assure that the comments properly synthesized the views of the Bureaus of Competition, Consumer

Protection, and Economics. Not everything said in the comments reflected my own views.

The FTC Bureaus recommended generally that the Interstate Commerce Commission exempt all rail boxcar traffic from ICC regulation. The economic analysis conducted concluded generally that enough competition of all types existed to protect shippers and consumers of boxcar traffic from abuses of market power. Regarding the car hire regulations, the FTC staff comments could be fairly characterized as generally supportive of the kinds of changes the ICC endorsed. In reply comments, the FTC Bureaus noted that the ICC would retain the power to carve out after-the-fact exceptions to the exemption if particular shippers have compelling evidence of railroad monopoly power.

Although my own views do not coincide totally with those expressed in the comments of the FTC Bureaus, I think that it would not be appropriate for me to take a position on the issues in the boxcar exemption case at this time. Some of those issues may require further consideration by the Commission because of the recent remand by the District of Columbia Circuit and the ICC's decision to appeal the case.

If those issues come before me as a Commissioner, I will consult the Commission's General Counsel concerning whether my participation in a Commission decision is consistent with the letter and spirit of the law, given my previous role at the FTC. I am prepared to consider the boxcar exemption issues with an open mind, based on the entire record. If I were to have any reason to think that I am not capable of doing that, I would recuse myself from participation in the case.

Question 2. What concerns me most about the Commission's new car hire regulations is the anticompetitive implications for small railroads. Many of the nation's Class III railroads—especially those in the Northwest—originate traffic destined for the Northeast region. In most instances the Class III railroads' sole connection is with a dominant trunk line carrier. As the Court observed, the Commission's new rules "place significant bargaining weapons in the arsenal of the destination carrier . . . and simultaneously deprived the originating carrier of the benefits" it could receive under a truly deregulated market. Do you share this concern? If not, in your opinion what protections are afforded the small originating carrier under the Commission's new boxcar rules? The Court further expressed doubt that the mere existence of the antitrust laws satisfies the Commission's statutory burden of making a finding that large carriers will not try to drive Class III railroads from providing service over efficient routes. Do you agree?

Answer. Regarding your question about the impact of the regulations on Class III railroads and the possibility that they could be unfairly squeezed out of profits to which they are entitled, yes, I share that concern as a general proposition. Again, without getting into the specifics of the boxcar proceeding, I think it is important that this type of issue receive careful attention with due regard for the interests of Class III railroads. I also agree as a general matter (without discussing this particular case on appeal) that the mere existence of antitrust laws does not guarantee anything in and of themselves. You need to look at the particular facts very closely and not take anything for granted, especially on issues of great magnitude. The appropriate application of antitrust laws may or may not be sufficient to combat anticompetitive activities in particular circumstances, and you can only determine which is the case by looking closely at the entire factual setting.

Question 3. Would you support elimination of regulations relating to mandatory interchange and the rail common carrier obligation? Please explain.

Answer. Regarding the hypothetical elimination of regulations relating to mandatory interchange and the rail common carrier obligation, it is my understanding that the Commission did not eliminate mandatory interchange or the rail common carrier obligation for boxcars in Ex Parte No. 346 (Sub-No. 8). To my knowledge no such proposals are under consideration at the present time. If this issue should come up during my tenure as a Commissioner, I would pay close attention to all the arguments pro and con before forming a judgment, although it is my sense that the burden of proof for such a policy revision ought to be upon the proponents of change.

Question 4. The U.S. Court of Appeals reversed and remanded the ICC's decision in Ex Parte 346 (Sub-No. 8)—the so-called boxcar deregulation decision. What action would you recommend that the ICC take with respect to boxcar regulation in view of the Court's order? Would you support a total exemption of all boxcar traffic from regulation? Would you support the deregulation of other types of rail freight cars?

Answer. My understanding about the U.S. Court of Appeals ruling on the boxcar matter is that the Commission voted last week to appeal the decision. Without having seen the Commission's arguments regarding the appeal, I have no basis for

judging their merits. If the court's decision is upheld, however, I think that the Commission should follow the court's mandate to the full extent by resuming the regulation of boxcar joint rates and terminating the special boxcar hire provisions unless and until it concludes further proceedings on these matters. My decision regarding whether to support a total exemption of all boxcar traffic from regulation would have to depend on a very careful examination of the record to see if it justified such a broad exemption. With respect to deregulation of other types of rail freight cars, I would support an exemption only if the record shows that continued regulation is not necessary under the criteria of 49 U.S.C. 10505. Regarding both boxcars and other types of rail freight cars, I would want to review any new proposals before me very carefully to see if they comply with all the Staggers Act criteria.

QUESTION OF SENATOR PRESSLER AND THE ANSWER THERETO

Question. 1. Earlier I asked whether you could foresee a specific circumstance in which you would require a railroad or other common carrier to continue operating in an area, even though it is losing money (but more than making up the difference from its operating authority in another area) if it is demonstrated to be in the public interest. I believe the answer was in the affirmative.

To be a little more specific, let me use a recent railroad abandonment case in South Dakota in which the ICC—by a two to two vote—upheld the Administrative Law Judge's (ALJ) recommendation to deny the Chicago and North Western Railroad's request to abandon the 165-mile line between Ft. Pierre and Rapid City, South Dakota.

The strong public interest in maintaining operations of that line was one of the major reasons for requiring the railroad to continue operations, although they said they were losing money.

Would you have agreed with the ALJ?

Answer. Time does not permit me to go back and attempt to review the record of the case to which you refer so that I could give you a specific "yes" or "no" answer. Instead, allow me to reiterate my statement to you in testimony yesterday that I would indeed require a railroad or other common carrier to continue operating in an area where it is losing money (but more than making up the difference from its operating authority in another area) if it is demonstrated to be in the public interest. I think that these judgments have to be made on a case-by-case basis, looking carefully at all the material on the record. Your description of the abandonment case in question certainly poses a situation where I would contemplate very seriously upholding the ALJ's decision.

Making a decision about what the public interest requires is a difficult task as I am sure you appreciate, and one that necessitates looking at a number of factors—such as the existence (or lack) of alternative carriers, the size of the loss that a community may suffer otherwise and its overall condition, the size of the railroad's losses and its overall condition, to name just a few—as a whole. I am concerned that a pattern not emerge where the ICC is viewed as automatically being on one side or the other regardless of the facts. I am also concerned that justice be done on these issues by looking at the core facts as controlling and not being distracted by any disparities in the sophistication of the cases presented where they reflect solely economic disparities between the competing parties. Against this background I will do my best to consider this important issue fully and fairly whenever it comes before me at the ICC.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question. 1. Democratic members continue to be concerned that true Democrats are nominated for Democratic vacancies at independent agencies. Would you please elaborate on your Democratic credentials?

Answer. I am proud to be a member of the Democratic party. I have been registered as a Democrat ever since I first became eligible to vote, and am currently registered with the Democratic party in Maryland.

While in high school, I worked as a volunteer student leader for the Robert F. Kennedy campaign effort in Hamden, Connecticut in the Spring of 1968. The effort involved a coalition with supporters of Senator Eugene McCarthy in the local delegate selection process. I also belonged to the Harvard Law School Democrats while in graduate school.

In addition, in 1980 I had the honor of joining the President's Council of Economic Advisers to serve as a Staff Economist/Lawyer specializing in regulatory analysis for the Carter White House.'

Question 2. There has been much criticism directed at the ICC over the last several months. With this in mind, why do you want to be an ICC Commissioner? Are there issues which you would like to pursue at the Commission? What contributions do you think you could make at the ICC?

Answer. Clearly the reductions in staff and the public criticism it has undergone, not to mention the complexity of the issues it is currently facing, makes this a difficult time for the ICC. Nonetheless, despite the magnitude of the challenge, I welcome the prospect of public service as an ICC Commissioner. Great challenges often present great opportunities for progress. I believe that I can contribute to favorably resolving a number of these matters in the public interest, working closely with fellow ICC Commissioners and the dedicated staff already at the agency. We as a nation are at a crucial juncture in our revitalization of national transportation policy and the actions of the ICC in the next year-and-a-half will have substantial consequences.

I am interested in pursuing a variety of issues at the ICC and have not yet established a firm set of priorities among them. However, it does appear at present that many of the most pressing and most complicated issues are to be found in the rail area, and I am eager to explore these issues.

As far as the contributions I could make at the ICC, I think I bring experience in regulatory analysis and management. I have also shown in my work to date an inclination and an ability to reach out to diverse individuals, philosophies, and groups to ensure that their insights and concerns are fairly considered before arriving at a conclusion. The ICC is most effective as a proponent for its policies when it gives indications that it has seriously considered the views of all parties, regardless of the particular decisions rendered.

Question 3. Your background indicates a previous position at the Council of Economic Advisers within the Carter Administration. What areas did you work on at the Council? To what extent were you involved in the regulatory reform efforts initiated under the Carter Administration? How would your work at the Council influence your work as ICC Commissioner?

Answer. At the Council of Economic Advisers, I served in the hybrid position of staff economist and sole lawyer. My responsibilities in this position were essentially threefold. First, I did legal analyses for CEA Members and staff particularly regarding what certain bills, statutes, or regulations would or would not require in given circumstances. Second, I was constantly called upon as a translator of sorts in explaining in detail to economists the nuances of lawyers' arguments and vice versa. Third, I performed economic and policy analyses as requested by the CEA Members.

My involvement in Carter Administration regulatory reform efforts was at the direction of the CEA Members and consisted largely of staff work with the Regulatory Analysis Review Group and as a liaison with individuals at the Council on Wage and Price Stability who were also performing regulatory analyses. To the best of my recollection, none of my work at the CEA dealt with ICC issues.

I think my work at the CEA was a useful experience in strengthening my analytical ability and providing a chance to observe government-wide regulatory institutions and issues, not to mention the benefit of learning from the many extraordinarily talented individuals I encountered. My experiences impressed several points upon me very deeply. I was convinced of the desirability of cooperative rather than confrontational efforts whenever possible. I was reinforced in my conviction that we need to minimize unnecessary regulation and maximize the efficiency of justified regulation, for to do otherwise merely squanders societal resources that could be put to more productive use. Any inefficient governmental regulation is a double disservice to the nation: not only are taxpayers' dollars wasted, but those dollars also are diverted from being spent either on other governmental regulatory efforts that could put the funding to better use and/or on beneficial private sector activities. Finally, I was humbled by the variety and sophistication of many of the regulatory issues before us, and realized that there is no substitute for doing your homework and making up your mind on a case-by-case basis only after detailed investigation and fair consideration of each matter.

Question 4. How would you characterize your regulatory philosophy? What is your perspective toward the role of independent regulatory agencies, and the ICC in particular?

Answer. My regulatory philosophy is that regulation is neither good nor bad in itself, but can only be judged in the context of the specifics of a particular situation.

Regulation quite properly has a place in our system, just as reliance upon market forces has a proper place.

I think generally that in the area of economic regulation (as opposed to aspects of safety or "social" regulation where a different standard is desirable), it is entirely fitting that we place primary reliance upon competition and only resort to regulation when there is compelling reason to conclude that competition is not feasible. When a compelling reason exists to conclude the competition is not working, or cannot work, then, of course, regulation is justified if we can devise regulations that will improve the situation on balance rather than worsening it. The task, then, is to determine which category a particular regulation or proposed regulation falls into. That determination requires careful consideration proceeding from a commitment to examine the circumstances on the merits.

As to the role of independent regulatory agencies, I think that they serve many useful functions. There may come a time when Congress wishes to enact a restructuring of the current system in an effort to achieve greater accountability or for some other purpose. However, unless and until Congress so acts, the independence of these agencies should be jealously guarded and I would uphold this principle as an ICC Commissioner.

Regarding the ICC in particular, it has been given the obligation by the Congress of supervising transactions that not only substantially affect carriers and shippers but that also bear heavily upon the nation's economy as a whole. It is therefore important to all Americans that the ICC do its job well. I would accordingly consider it a great honor to serve as a Commissioner of the Interstate Commerce Commission, and would execute that duty to the best of my ability if confirmed.

Question 5. Most recently you have been working as an attorney at the Federal Trade Commission (FTC). In that capacity, you were responsible for certain filings made at the ICC on behalf of the FTC and which could be characterized as promoting deregulation. Is that an accurate characterization? Would you espouse those positions at the ICC if confirmed as Commissioner? To what extent will your work at the FTC influence your positions at the ICC?

Answer. To begin with, it is worth noting that my work at the FTC has involved supervising the preparation of comments by staff that reflect a consensus position of all three FTC Bureaus and which are submitted to the full Commission for its review and approval. Given this process, it would be incorrect to conclude that the comments represent my views on all points, although it is fair to say that I am generally supportive overall from an FTC perspective. That is, these comments are intended to present to other bodies the traditional FTC twin concerns of promoting consumer welfare and fostering competition. This is done in order to both offer particular insights the FTC may have on a matter at hand based upon agency expertise and to advocate the interests of consumers and competition that might otherwise go underrepresented in some circumstances. I think that this is the most accurate way to characterize these filings.

If I become an ICC Commissioner, I would view matters from a very different perspective than I have at the FTC. In the first place, the range of factors that an ICC Commissioner is obliged to consider properly encompasses much more than just the two areas of special concern to FTC staff. Moreover, while I have played the roles of synthesizer and advocate in my position at the FTC, as an ICC Commissioner I would be in the position of a decisionmaker who sifts through the material presented by a variety of advocates and then reaches a conclusion. As such, I can assure you that I would view the issues with an open mind with a due regard for the concerns of all parties, and that I would exercise my independent judgment in making a determination based upon the evidence presented in the record.

We are all a product of our experiences, and I would bring with me many valuable lessons learned at the FTC. I have grown during my time at the agency, aided in no small measure by the outstanding individuals with whom I have been privileged to work, and through the experience I have acquired in the course of fulfilling the responsibilities given to me. Of course I will retain respect for the FTC as an agency and a sensitivity to the concerns that fall under its mandate. Yet you need not have a blank mind in order to be open-minded. At the ICC, I would approach all issues by considering them separately, on their own merits, in a thorough and fair manner, with no commitment to reaching any foreordained result, and with particular sensitivity to the needs of those least able to look out for themselves. I honestly cannot say what conclusions such inquiries will lead me to, but I can say this is the fashion in which I would proceed.

Question 6. The ICC has been criticized for not fully exercising the statutory authority it has been given under the various regulatory reform measures. Some groups claim that the ICC has not provided the regulatory protection intended

under those acts. Others by contrast claim that the ICC has not fully used its powers to further deregulate the transportation industry where appropriate. How would you characterize the past actions of the Commission in this regard?

Answer. I find it difficult to make such a broad characterization, especially since I do not have full knowledge of all past actions (or lack of action) by the Commission. I know that the search for the proper balance is both difficult and imperative, and I would look at this question very closely.

Question 7. As you are probably aware, the ICC has been severely criticized for what could be termed its inability to function effectively, and without unnecessary dissension, to resolve the important transportation issues facing it. What is your perception of the problems at the Commission and among the Commissioners? What would you propose to ensure that the Commissioners work together toward constructive approaches to the implementation of transportation policy as intended by Congress?

Answer. Because I have not been at the ICC during the time in question, I have no first-hand knowledge regarding reports of dissension at the Commission. I suspect that at least some reports I have read have been exaggerated, and have heard from a variety of sources that tension has been easing. Nonetheless, at a minimum, the public perception is troubling, and one that I would devote substantial efforts to changing as part of a collegial body.

Since my nomination, I have spoken with each sitting Commissioner regarding their general approach to Commission business. Based on these talks and my respect for these people as individuals and Commissioners of the ICC, I am confident that we will successfully work together to carry out the mandate of Congress. I would also point out my experience at the Federal Trade Commission where I have been able to work together successfully with Commissioners of diverse philosophies and perspectives by establishing good working relationships based upon trust, fair dealing, and an openness to all ideas presented. I intend to take the same approach at the Interstate Commerce Commission and hope I can contribute thereby to dispelling any negative perceptions. I also think that openness in Commission proceedings whenever possible is a useful mechanism that will lead to increased public confidence in the agency.

Question 8. With particular respect to the Staggers Rail Act, various groups have raised concerns that the Commission has not exercised its jurisdictional authority to protect captive traffic as was intended by the Act, nor to preserve competition where necessary. Are these concerns well-founded?

Answer. The concerns raised by various groups that the Commission has not exercised its jurisdiction to protect shippers of captive traffic as intended by the Staggers Rail Act nor preserved competition where necessary are very serious and merit attention. After weighing all of the facts, Congress mandated an effort to balance the needs of railroads to achieve revenue adequacy and the necessity to protect captive shippers. If, after determining that a shipper is, based on the evidence of record in a given proceeding, in fact captive, the protection envisioned by Congress must be provided.

Question 9. A concern has been raised that the Commission has abused its exemption authority under the Staggers Act. Do you believe that this authority has been abused? Are there legitimate areas that could be exempted from regulation under this provision?

Answer. Under the Staggers Act, the Commission should use its exemption authority only in accordance with the Congressional criteria set forth in 49 U.S.C. 10505. As a Commissioner, I will endeavor to properly apply the criteria to all proceedings concerned with exemption of rail related activities.

Question 10. Certain groups have criticized the Commission for completely abdicating its responsibilities under the Motor Carrier Act to continue to regulate certain aspects of truck transportation. How do you view the ICC's activities under that Motor Carrier Act? Are there areas where the Commission should be regulating that it is not?

Answer. The ICC activities pursuant to the Motor Carrier Act have generally been to promote competition by easing entry barriers and to permit price-service options to be controlled by market forces as opposed to direct regulation of rates and practices. I believe the Commission's actions have been generally in accord with the Congressional mandate set forth in the national transportation policy. At this time I cannot specify areas where the Commission should initiate a new regulatory agenda concerning motor carriers. However, I am open to the possibility that there are situations that should be exceptions to the general rule in this area that competition instead of regulation is to be the primary factor in the marketplace, I certainly would seriously consider such a proposal if it were brought before the Commission.

Question 11. It has been nearly two years since Congress passed the Bus Regulatory Reform Act. How would you assess the Commission's implementation of that Act? What has been the impact of that deregulated?

Answer. I have read testimony presented last year by the Commission at oversight hearings on the Bus Regulatory Reform Act. Based on that testimony, it appears that the Commission has implemented the Act in accordance with Congressional intent. Studies conducted by the Commission, as well as the testimony of industry witnesses at the oversight hearings, indicate that the industry is responding positively to the operational freedoms afforded by the Act. There has been a significant amount of entry into the industry as new carriers begin operations and existing carriers expand. At the same time, carriers have moved to rationalize their route structures and eliminate noncompensatory rates. Innovative discount programs are being instituted as carriers become more competitive. This increasingly competitive environment promises to result in improved price and service choices which will benefit both the public and the industry.

I am aware of concerns raised about the effects of route discontinuances and fare adjustments on the bus industry and the public it serves. These effects are not entirely unexpected as the industry adapts to the increasingly competitive environment created by the Bus Act. As to whether and when the bus industry should be completely deregulated, I need time to review the issue more extensively before reaching a conclusion.

Question 12. In recent months, the ICC has considered cases involving the combination of different types of transportation. How do you view the move toward intermodalism? To what extent can and should the Commission promote multimodal companies?

Answer. In the national transportation policy, Congress has emphasized that intermodalism is a goal of regulation that should be encouraged. The benefits of intermodalism include added competition, rationalized operations, improved and created efficiencies, and single- in lieu of joint-line service. Therefore, I would promote intermodalism where possible in accordance with the statute. I do not, however, view the promotion of particular multimodal companies in preference to particular unimodal companies as such to be a proper concern of the Commission under the statute.

Question 13. With the impending sunset of the Civil Aeronautics Board, what is your view of the future of the ICC? Should it be sunsetted, with remaining functions to be performed by an Executive Branch agency?

Answer. In my opinion, a number of the functions currently performed at the ICC will continue to be necessary for the foreseeable future. Whether those functions should always be bundled together under the umbrella of the ICC remains to be seen. Close study of any particular proposals along these lines is warranted but speculation about the future ought not to distract the agency from performing its mission in the present consistent with the public interest.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS THERETO

Question 1. Concerns have been raised about the possibility that predatory pricing in the motor carrier industry has gone unchecked. What is your response to this concern? Has the ICC been carrying out its mandate in this regard?

Answer. I understand that these concerns have been raised and I think any such charges deserve careful examination whenever they are credibly made. This is because predatory pricing in the motor carrier industry would be antithetical to everything that full and fair competition is about. Predatory pricing would put competitors out of business and force shippers and consumers to pay higher prices as a result, and there is nothing competitive about that.

So, I take the allegations seriously because, if true, the consequences are potentially so severe. At the same time, while being alert to the possibility of predatory pricing—and certainly being open-minded as to its existence in any particular market area—I think it is also important to realize that, in general, the ability of any carrier to successfully predate is constrained by the ability of other carriers to freely enter the market in question. My understanding is that the motor carrier industry as a whole is considered structurally competitive (i.e. not a natural monopoly type of situation and contestable), relatively unconcentrated, and relatively inexpensive to enter. While not determinative, these are all healthy signs that predation would be difficult to achieve. The reasoning is that it would not do a potential predator any good in these circumstances to underprice a competitor(s) and drive it out of the market in order to raise rates above the competitive level for the purpose of recovering its losses while underpricing and then some. This is because, with free

entry, new competitors would enter the market and seize business by underpricing the would-be predator when it raises rates. Certainly there may be exceptions to this scenario worthy of attention, but I think those exceptions are likely to be rare given the mobility of capital in this industry.

As to whether the ICC has been carrying out its mandate in this regard, I am not in a position to render a judgment yet. I will say that as an ICC Commissioner I would neither tolerate competitive abuses nor the appearance of indifference to their existence, and will act vigorously to discover and root out any predatory pricing that may be occurring in the motor carrier industry.

Question 2. There continues to be much discussion about the elimination of antitrust immunity for motor carriers. Given your background at the FTC, how do you evaluate this issue? Is there value in retaining antitrust immunity?

Answer. I thought long before beginning work in the career civil service position where I am today at the FTC that effective antitrust enforcement is a vital complement to our national economic system. Although I have not been responsible for any of the FTC's own antitrust policies, I believe my view that vigorous antitrust scrutiny is both necessary and desirable to police anticompetitive behavior is within the broad mainstream of thought on the issue. Since I understand that MC-172, which is directly related to your question, is currently before the ICC, it seems appropriate not to get into the specifics of that proceeding in order to avoid any possibility of prejudgment should the matter come before me with the General Counsel's approval of my participation.

However, to respond as best I can to your question, I think that antitrust jurisdiction ought to be the rule rather than the exception, and that any exemptions from antitrust scrutiny should only be granted for compelling justifications in the public interest. Yet it is true that there may be value in retaining antitrust immunity to cover a specific set of facts, and I am open to that possibility. Any particular determination as to whether such immunity ought to be continued or rescinded can only be made following an objective and searching review of the record and that is the kind of review I would conduct as an ICC Commissioner.

Question 3. During this period when the transportation sector is moving from being more regulated to less regulated, concern has been raised that the ICC has not implemented the reform measures in such a way as to provide for the necessary transitional adjustments. How do you view this concern? Are there areas in which you feel the ICC could provide more transition?

Answer. This concern strikes a very responsive chord with me. It seems to me that, as a practical matter, the shock of any substantial changes in policy can often be cushioned by a carefully planned transitional period. It would seem to me that this kind of approach is worth following when possible, especially since it is fully consistent with reaching the desired goals of the reform measures. Certainly there are reforms that can only be effectively implemented all at once, but I think the ICC ought to be searching for ways to ease the adjustment period for all concerned when that does not conflict with attaining the ultimate end in the long-run. The rail sector could be such an area, and I will certainly explore opportunities for providing transitional steps to make the process of reform smoother, fairer, and less difficult for those affected.

Question 4. Concern has also been raised about the number of rail mergers and their potentially detrimental impact on competition within the industry. What is your response to this concern? Has the ICC been sensitive to this concern?

Answer. I am concerned with all actions that hold the potential for lessening competition, and without doubt rail mergers can have that result. I think that a complete examination of this question requires that the overall effect of any rail merger on both intra- and intermodal competition be taken into account. In the abstract, it seems to me that some rail mergers could strengthen competition by creating a healthy competitor out of two virtually dormant lines, while others could weaken competition by creating the incentive and the ability to indulge in anticompetitive tactics.

I would examine the record on any proposed merger to ascertain whether it is pro- or anticompetitive. As to the sheer number of mergers taking place, I think it does not in itself tell us whether there is something wrong going on, but recognizing the extent of merger activity means at the very least that we ought to be wary and determined to be especially prudent in how we proceed. I do not now know whether the ICC has been sufficiently sensitive to this concern in the past, but I will be in the future if confirmed.

Question 5. The ICC in recent months has issued opinions and policy statements facilitating the acquisition by railroads of other transportation modes. Concern has

been raised about the potentially anticompetitive impact of such combinations. What is your view of this concern?

Answer. I think the concern is warranted at least to the extent that we need to be cautious on these matters and to condition approval of such acquisitions upon a conclusion that they would be procompetitive overall. The CSX case may come back to the ICC as the result of an appeal, so I think I should not go into the details of that case, or any particular case. However, I want to assure you that I take this concern seriously and would actively consider it regarding the specifics on the record of any such acquisition case that I may be asked to decide. As one who thinks reliance upon competition when possible is sound public policy, I feel a special obligation to be sensitive to cases that may be an exception to the rule, and to fight determinedly against anticompetitive impacts in whatever guise they may appear.

QUESTIONS OF SENATOR FORD AND THE ANSWERS THERETO

Question 1. The Interstate Commerce Act provides that the policy of the United States Government in regulating the railroad industry is to maintain reasonable rates where there is an absence of effective competition (49 U.S.C. 10101a(6)). What does this mean to you? In particular, in your view, should a freight shipment be regulated by the ICC in regard to rates and service provided when a single rail carrier represents the only practical source of transportation for part or all of the movement from origin to ultimate destination or to a river, lake, or coastal port for transshipment by water carrier? Isn't this a situation frequently faced by shippers of heavy bulk commodities such as coal, grain, fertilizers, chemicals, and ores?

Answer. In the Staggers Rail Act, Congress stressed its conviction that competitive forces, rather than federal regulation, should establish rate levels where there is effective competition. However, in 49 U.S.C. 10101a(6), Congress indicated that reasonable rates should be maintained for those shippers who have no feasible alternatives to rail service.

As for the hypothetical situation you describe, rates for the shipment should be regulated if the rail carrier has market dominance over the traffic. It is my understanding the courts have ruled that in making a market dominance finding the Commission may consider not only evidence of intermodal and intramodal competition, but also evidence of geographic and product competition. The extent to which these latter types of competition may serve as effective constraints on abuse of market power by a rail carrier is a matter I intend to study further. I believe that each situation must be analyzed individually.

Question 2. The critical Long-Cannon Amendment embodied in the 1980 Staggers Rail Act and now provided in the Interstate Commerce Act (49 U.S.C. 10707a(e)(2)(A)(B)(C)) seeks to minimize non-compensatory traffic, to maximize revenues from traffic that contributes only marginally to fixed costs, to consider the impact of proposed rates or rate increases on attainment of national energy goals, and to determine whether one commodity is paying an unreasonable share of the carrier's revenues. How would you deal with such provisions in present law as they relate to the ICC's proposed coal rate guidelines which would allow rates to increase 15 percent yearly above inflation and in addition to claim that a rate is not unreasonably high if it is no more than what a coal shipper would pay to build and operate a railroad for the movement?

Answer. I am well aware of the fact that Congress intended the Long-Cannon Amendment factors to play a role in setting rates on captive movements, and will observe this Congressional intent in my decisions. The Commission's proposed maximum rate guidelines constitute an attempt to implement this Amendment. The 15 percent annual increase is also a part of those guidelines. I have not decided how to deal with these issues, and must review and evaluate the record on the matter before I can make an informed judgment. I will complete my review and evaluation of these complex issues as quickly as possible.

Question 3. Do you believe that Congress intended that the ICC balance the revenue needs of the railroads against the need to protect captive shippers?

Answer. Yes, I believe that Congress intended for the ICC to balance the revenue needs of the railroads against the need to protect captive shippers. The changes brought about by the Railroad Revitalization and Regulatory Reform Act and the Staggers Act establish changes in the regulatory environment which provide railroads with greater economic flexibility. Nevertheless, both Acts also specifically require the Commission to balance needs of the carrier against those of the shipping community.

Question 4. Do you believe that the ICC has maintained this balance since October, 1980?

Answer. The Commission has initiated a number of rulemakings implementing the Staggers Act and I have not had an opportunity for sufficient review for me to draw a conclusion as to whether a proper balance has been achieved. The Commission's regulatory activity since the Staggers Act has clearly been controversial and has received considerable public attention in the news media and trade journals. Some articles have suggested that the Commission is not properly balancing the needs of carriers and shippers. I intend to take a close look at the facts. If the Commission has not yet achieved a proper balance, it is important that it do so expeditiously; if it has achieved a proper balance, then it must be maintained.

Question 5. Have you analyzed the ICC's proposed decision in Ex Parte No. 347 (Sub-No. 1), served February 24, 1983? If so, do you agree with it?

Answer. I have not had the opportunity to carefully study the Commission's proposed guidelines for maximum rates. I am, however, generally familiar with the problems surrounding the maximum rate questions. It is important in establishing maximum rates for captive shippers that the guidelines properly balance the railroads' revenue needs against the shippers' needs to be protected from paying excessive rates. Whether the guidelines in fact do achieve this balance requires a far greater analysis of the record than I have been able to complete so far. Until I do that, I must refrain from taking any position that could appear to prejudice this complex case currently before the Commission.

Question 6. Do you believe that railroads should be permitted to raise rates for a captive shipper until they reach the point where it would be cheaper for the shipper to build its own railroad?

Answer. The use of the stand-alone cost test or "build your own railroad" is a fairly new concept. Clearly, serious questions can be raised about its wisdom. The stand-alone cost test may have value. My understanding of the stand-alone cost test is that it does not literally require each captive shipper to build its own railroad. Instead it seeks to answer the question of how much rail service to a captive shipper would cost if there were a competitive alternative available. To the extent that regulation is an attempt to emulate conditions that would obtain if competition were feasible, the stand-alone cost concept may have some utility as an analytical tool, but I have not made up my mind on whether, how, and when it should be employed. I believe the concept requires full consideration from both a theoretical and a practical perspective before coming to a reasoned conclusion.

Question 7. What do you believe should be the Commission's role in determining what is a maximum reasonable rate for a captive shipper of coal by rail?

Answer. Where the railroad has market dominance over the traffic, the Commission has jurisdiction to make a determination as to whether a rate exceeds a maximum reasonable level. Once a market dominance determination is made, I believe the Commission's role is and should be to determine whether the rate exceeds maximum reasonableness. The "captive shipper" question is an important issue which I intend to take very seriously if confirmed as a Commissioner.

Question 8. What are the factors that you believe should be considered in determining what is a maximum reasonable rate for a captive coal shipper?

Answer. Establishing maximum reasonable rates for captive shippers, as we all recognize, is an extremely complex problem that requires balancing conflicting interests and considering a multitude of factors. Based on my rather limited current exposure to the issues which must be considered in establishing such a maximum rate policy, I cannot give a detailed list of factors that should be considered.

However, I believe that competitive earnings, management efficiency and cost are logically likely to be among the important factors. Until I have evaluated the record in the case I must confine my remarks to these general observations.

Question 9. If a railroad is not earning adequate revenues, is this sufficient justification for a railroad to charge any rate it wishes to a captive coal shipper?

Answer. Under the Staggers Rail Act, the Commission is required to assist the carriers in achieving adequate revenue levels. However, the goal of revenue adequacy, while important, is only one of the factors to be considered in accordance with the rail transportation policy. The Commission is also directed to maintain "reasonable" rates where there is an absence of effective competition. The ultimate decision as to whether a particular rate is reasonable would depend, I believe, on the specific facts in a given case, considered in the light of the statutory criteria and any general implementing guidelines the Commission may establish.

Question 10. To what extent should the ICC take into account the railroad's cost of service in determining a maximum reasonable rate?

Answer. Cost of service is certainly a factor that should be considered in establishing maximum rates. However, there are other factors such as management efficiency, contribution to overall profitability and degree of captivity that also seem worthy of consideration. The weight to be given various factors is a matter that I will investigate further if confirmed.

Question 11. Do you agree that national energy goals should be taken into account in setting maximum railroad rates? How would you accomplish this result?

Answer. I agree that national energy goals should be taken into account in setting maximum railroad rates.

The Staggers Act issues are complex and require the balancing of a number of factors including energy goals. I intend to follow Congressional intent to the best of my ability, and to determine this type of issue on a case-by-case basis, consistent with statutory criteria and Commission guidelines. Until I have had an opportunity to study these issues in detail and resolve them in my own mind, I cannot state specifically how I would implement Congressional policy in this area.

Question 12. Do you believe the railroads should be required to produce the evidence necessary to enable the Commission to make the determinations required by the Long-Cannon criteria?

Answer. At present, I am informed, the Commission's rules require that evidence of the Long-Cannon factors be submitted by the party that bears the burden of proof in a given proceeding. This would require the carrier to submit the evidence in a Commission-instituted investigation, and the shipper to do so when a complaint is filed.

While I am familiar with the Long-Cannon criteria in general terms, I need to become more knowledgeable in this area before I can comment in depth as to which party should have the burden of producing particular evidence.

Question 13. Have you reviewed the Commission's proposed decision in Ex Parte No. 393 (Sub-No. 1), served March 9, 1983?

a. If "yes", do you believe the Commission's proposed use of "current cost" accounting would produce accurate, reliable information?

Answer. Yes, I have very briefly reviewed the Commission's decision which seeks to revise the present standard for determining rail revenue adequacy. The proposed revisions do include the use of data adjusted for inflation, but because the specific revisions are highly technical they require further review before I can comment in detail on their merits. I am also aware of arguments in the accounting profession over this unsettled issue. Again, I have to study the proposal further and review the record before commenting on the accuracy or reliability of the information.

Question 14. Does it appear to you that the major coal hauling railroads are financially unhealthy?

a. If "yes", explain.

b. If "no", do you believe the ICC's conclusion that no major railroad is earning adequate revenues is incorrect?

Answer. Revenue inadequacy under the present standard and the label "unhealthy" may not be synonymous. As I understand it, the present standard deals with the long-term financial condition of the railroad industry. It principally concerns the railroads' ability to sustain a viable industry to meet the public's need for rail service in the foreseeable future. The massive capital shortfalls of this industry that contributed to passage of the 1976 and 1980 Acts did not happen overnight and will not be overcome in short order. Public policy dealing with the revitalization of the industry must necessarily be far-sighted.

The financial condition of the railroad industry appears to have improved significantly since the Staggers Act was passed. While the railroad industry does not appear to be "unhealthy," I do not know now if it is earning sufficient returns to replace plant and attract capital, or if it is in fact earning excessive returns. I intend to find this out in short order once I am at the Commission.

Question 15. Should multiple indicators of financial health be used to determine if the railroads are earning adequate revenues?

a. If "yes", do you agree that these indicators should include bond ratings and return on shareholders' equity?

b. If "no", what is your justification for use of a single standard?

Answer. The evaluation of a firm's financial condition is a complex matter. Generally, financial analysts use a myriad of financial indicators to assess the short-term attractiveness of a firm. Various ratios may be used by an analyst depending on the purpose and objective of the analysis. Before reaching a conclusion regarding the use of a single standard approach such as the one used by the Commission, I would like to see some evidence of how stable the railroad industry is in its long-

term prospects for attracting capital, paying dividends and reinvesting in productive capacity.

Question 16. Now that the Railroad Accounting Principles Board has been reauthorized, do you believe the ICC should defer implementing the Uniform Rail Costing System until the Board has had an opportunity to consider this system and make recommendations to the Commission?

Answer. I have not had the opportunity to study this matter sufficiently to offer even tentative conclusions regarding the merits of these issues. All I can say at this point, therefore, is that if Congress directs the ICC to defer implementation of the Uniform Rail Costing System until the Rail Accounting Principles Board has reviewed it, I would not object. I understand that the costing system has been under development for several years and has also been through a rulemaking process at the Commission so the matter would appear to be ripe for resolution one way or the other.

Question 17. Do you believe that the ICC should take into account railroad productivity in calculating the Rail Cost Adjustment Factor?

Answer. The use of a productivity adjustment in the development of the Rail Cost Adjustment Factor is both an important and difficult problem. Making no productivity adjustment could result in an overstatement of inflation, but over adjusting for productivity would cause other problems. The solution, as I see it, is the development of a productivity measure that accurately tracks inflation. The development of such a measure is being considered in Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures Productivity Adjustment*. I am not familiar enough with the record to comment on the current proposal at this time.

Question 18. Senator Danforth has recently introduced a Joint Resolution, on behalf of a number of Senators including myself, pointing out some of the problems with the ICC's implementation of the Staggers Rail Act. It addresses such matters as the financial indicators used in determining rail revenue adequacy; the use of product and geographic competition in market dominance determinations; the Commission's coal rate guidelines; and mandatory interchange and reciprocal switching. The Joint Resolution is intended to be a clear signal to the ICC and others that Congress expects all the goals of the Staggers Act to be met, including protection for captive shippers.

If you are confirmed as a member of the Commission, would you heed this signal? Will you carry out the intent of this resolution?

Answer. I believe that the Commission indeed has a duty to consider all of the goals of the Staggers Act, including that of protecting captive shippers. The matters addressed in the Danforth Resolution cover many of the most important issues before the Commission. I intend to carefully study each of these issues before taking a position, but I can say now that I will always attempt to follow Congressional intent as best I can discern it.

Allow me to add as a final note applicable to all the questions directed to me from the Committee that I have tried to address them as fully as possible while complying with the deadlines for submitting my answers.

Question 19. Your resume indicates that you were responsible for the drafting of the Federal Trade Commission's staff comments and the oral argument in the Interstate Commerce Commission proceeding Ex Parte No. 346 (Sub-No. 8), the so-called Boxcar Deregulation proceeding.

Answer. I should explain for clarification that my role was to coordinate the drafting of the staff comments and the submission of those comments to the Federal Trade Commissioners. It was my responsibility to assure that the comments properly synthesized the views of the Bureaus of Competition, Consumer Protection, and Economics. Not everything said on the comments necessarily reflected my own views.

Question 20. What was the FTC's position and rationale in this proceeding?

Answer. The FTC Bureaus recommended that the Interstate Commerce Commission exempt all rail boxcar traffic from ICC regulation. The economic analysis conducted concluded generally that enough competition of all types existed to protect shippers and consumers of boxcar traffic from abuses of market power. In reply comments, the FTC Bureaus noted that the FTC would retain the power to carve out after-the-fact exceptions to the exemption if particular shippers have compelling evidence of railroad monopoly power.

Question 21. Are your own views consistent with the position taken by the FTC in this proceeding? Please explain where your own views differ and the justification for your different point of view.

Answer. My own views do not necessarily coincide totally with those expressed in the comments of the FTC Bureaus. However, I think that it would not be appropri-

ate for me to take a position on the issues in the boxcar exemption case at this time. Some of those issues may require further consideration by the Commission because of the recent remand by the District of Columbia Circuit.

If those issues come before me as a Commissioner, I will consult the Commission's General Counsel concerning whether my participation in a Commission decision is consistent with the letter and spirit of the law, given my previous role at the FTC. I am prepared to consider the boxcar exemption issues with an open mind, based on the entire record. If I were to have any reason to think that I am not capable of doing that, I would recuse myself from participation in the case.

Question 22. As you may know, there has been considerable controversy surrounding this decision and the implication of the decision for small railroads. Recently, the ICC responded to these concerns by extending the effective date of the new car hire rules for Class III railroads for one year and by initiating a new proceeding to consider alternative proposals. What is your view of this recent action taken by the Commission?

Answer. As I previously explained, I do not feel that I should go into the merits of the issues in the boxcar exemption case at this time. However, I certainly support taking the time to look at all aspects of the car hire problem.

Question 23. Class III railroads have consistently argued that they would have insufficient bargaining power under the new car hire rules approved by the Commission in Ex Parte No. 346 (Sub-No. 8) and therefore would be subject to abuse of market power by dominant carriers. Do you share this concern? If not, in your opinion, what protections are afforded the small originating carriers in a deregulated market?

Answer. I am sensitive to the concern. If I am called upon to consider changes in car hire regulations that affect small railroads, I will study the entire record carefully in order to judge whether the concern is borne out by the facts.

Question 24. On June 27, 1984, the U.S. Court of Appeals for the District of Columbia Circuit reversed the ICC's order in Ex Parte No. 346 (Sub-No. 8). The court held that (1) by exempting joint rates from regulation it was subjecting small carriers to potential abuse of market power by large carriers and (2) that the new car hire rules were new regulations and consequently could not be based upon the ICC's exemption authority. Do you agree with the court's conclusion? Please explain.

Answer. I did not read the court's opinion as a declaration that the joint rate exemption would necessarily subject small carriers to market power abuse. My initial reading is that the court held that the Commission's decision did not adequately explain why the exemption would not result in the closing of efficient joint routes or in unfair divisions of revenue between large and small carriers. The court's remand appears at first blush to allow the Commission to further consider these issues in deciding whether boxcar joint rates should be exempted. On the car hire aspect of the exemption, the court clearly did rule that the Commission's action constituted rulemaking without proper notice rather than an exemption.

I am told that a majority of the Commission has decided to appeal the court's rulings on both issues. I am not fully informed of the bases for the appeal and consequently have no opinion at this time on its technical merits. In the event the court's decision is upheld, however, I fully support a careful reexamination of the joint rate issues in the light of the court's opinion. I also support the Commission's plans to receive further public comments on alternative approaches to car hire regulation.

Question 25. Would you support elimination of regulations relating to mandatory interchange and the rail common carrier obligation? Please explain.

Answer. The Commission did not eliminate mandatory interchange or the rail common carrier obligation for boxcars in Ex Parte No. 346 (Sub-No. 8), and to my knowledge no such proposals are under consideration at the present time. If this issue should come up during my tenure as a Commissioner, I would pay close attention to all the arguments pro and con before forming a judgment.

Question 26. The U.S. Court of Appeals reversed and remanded the ICC's decision in Ex Parte No. 346 (Sub-No. 8). What action would you recommend that the ICC take with respect to boxcar regulation in view of the court's order? Would you support a total exemption of all boxcar traffic from regulation? Would you support the deregulation of other types of rail freight cars?

Answer. The Commission has just recently decided to appeal the court's decision. Without having seen its arguments regarding the appeal, I have no basis for judging their merits. If the court's decision is upheld, however, I feel that the Commission should follow the court's mandate to the full extent by resuming the regulation of boxcar joint rates and terminating the special boxcar hire provisions unless and until it concludes further proceedings on these matters. My decision regarding whether to support a total exemption of all boxcar traffic from regulation would

have to depend on a very careful examination of the record to see if it justified such a board exemption. With respect to deregulation of other types of rail freight cars, I would support an exemption only if the record shows that continued regulation is not necessary under the criteria of 49 U.S.C. 10505.

Question 27. In Ex Parte No. MC-172, the ICC is deciding whether to eliminate antitrust immunity for collective ratemaking on small shipments. The Commission is also considering the broader question of whether to eliminate antitrust immunity altogether for motor carriers.

I understand that, in your position at FTC, you advocated elimination of antitrust immunity. Won't you have a problem taking an impartial view with regard to issues that may come up in this area?

Answer. The Federal Trade Commission supported the removal of antitrust immunity for collective ratemaking in the Ex Parte MC-172 proceeding now pending before the ICC. I understand that this proceeding is scheduled for an open conference vote on August 9, 1984, and I sincerely doubt that I will be a Member of the ICC by then. If this issue should arise after my confirmation, I am fully confident that I can consider all the issues and render a fair and impartial decision consistent with the Congressional mandate of the Motor Carrier Act. The FTC's twin mandates concern consumer welfare and fostering competition. The Issues before the ICC, however, are substantially broader than just those addressed by the FTC, and my role at the two agencies would also involve very different responsibilities. Although I believe that I would be able to take an impartial view of this proceeding, any questions on that score will be referred to the Commission's General Counsel. His decision will weigh heavily in my decision on whether to participate in this proceeding.

Question 28. Based on various pleadings you have filed, it appears that you are ideologically a deregulator. In my view, what we need at the Commission is a common sense approach, an ability to reach rational decisions, based on the record before the agency. What is your opinion? What kind of approach will you take?

Answer. I agree with your approach. As you say, common sense is an important commodity and one all too often is short supply in human affairs. Although I favor elimination of unnecessary regulation, I also believe in continued regulation where necessary to protect the public interest, and am sensitive to the concerns of small communities and captive shippers. I will take a balanced approach in my decision-making by first carefully considering the record in each proceeding and evaluating the comments of all parties, and then striving to render sound legal decisions consistent with the intent of Congress.

[The following information was subsequently received for the record:]

POST HEARING QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question. In response to one of the pre-hearing questions from the Majority, you noted that as a Commissioner you would want to closely monitor the effects of the Motor Carrier Act of 1980 on the providers and users of transportation service.

(a) In what ways do you believe the Commission should monitor these effects?

Answer. I think that the Commission should monitor the effects of the Motor Carrier Act of 1980 on the providers and users of transportation service by taking representative samples of opinions from the affected groups on a regular basis, in addition to keeping track of entry/exit matters, the range of services being made available, and price effects. Clearly, small communities are one such affected group that ought to be accorded due weight in these samplings. The Commission ought to also make it unmistakably clear to the general public that its views are earnestly solicited and will be given respectful attention.

By taking these steps, the Commission can spot quickly any possible emerging problem areas and address them before they have a chance to become so entrenched and intractable that they needlessly and seriously injure the public and consume Congressional time. It is my belief—and the early data appear to confirm this so far—that the Motor Carrier Act of 1980's insistence upon competition whenever and wherever feasible is in the long-run interest of all citizens regardless of where they reside. Yet that belief is best tested and verified (if correct, as I think it is) by being scrupulously alert to the possibility of localized problems with a firm resolution to root them out promptly should they arise. Needless to say, this effort ought to be in addition to, not as a substitute for, the Commission's fulfilling its duties in supervising common carrier obligations in the public interest.

Question. Would you advocate that the Commission conduct further research on the impacts of deregulation on trucking service to and from small communities?

Answer. Indeed I would advocate that the Commission conduct further research on the impacts of deregulation on trucking service to and from small communities. I think this should be done on a regular basis, frequently enough to pick up important trends early but also allowing sufficient spacing between studies so that there is time for the differential effects to be measurable.

I take this position for two reasons. First, as we all know, in our dynamic economy circumstances are liable to change—sometimes quite rapidly. Today's truth can become tomorrow's misperception if we are not vigilantly monitoring and continually checking assumptions against the facts. Because we have done several studies that indicate things are well at present does not mean we can rely upon them forever. Better to keep checking so that we can make fine adjustments if warranted rather than needing wholesale changes because we have been caught unaware after a considerable period of time. Second, as one who fundamentally believes in the wisdom of Congress' decision to opt for a reliance upon competitive forces in this area, I think it is also vital that we demonstrate through deeds as well as words our unwillingness to tolerate any competitive abuses that may occur from time to time. Seriously looking for, and coming down hard upon, instances of anticompetitive behavior constitute an ounce of prevention well worth taking.

Finally, in our evaluation of the results of this Act, we should bear in mind that the proper comparison for the newly-competitive system is not some illusory world of perfect regulation, but the reality of the recent past where the regulatory edicts of a few—however, dedicated and well-intentioned—could not keep up with, let alone well serve, the constantly changing needs and desires of citizens across this vast land. Competition is not perfect but I think that as a rule it continues to outperform regulatory extremes that are substantially less perfect and out of keeping with the essence of our market economy.

Question. If confirmed, what would you do to ensure that the members of the Commission work together better in the future?

Answer. The members of the Commission need to talk with each other if they are going to work well together. I have talked with each sitting Commissioner and conveyed my desire to work with them as part of a collegial body. Without exception, they have said this is also their desire. Regardless of any substantive disagreements that may occur, it is vital to keep the lines of communication open to all offices so that we can share ideas with, and learn from, each other. In fact, it strikes me as especially important that individual Commissioners who may have the greatest differences on policy keep in close touch. Experience has taught me that you learn the most and reach the wisest conclusions following respectful intellectual exchanges not with those who share your views but with those who take different positions.

If confirmed, I would follow my practice at the Federal Trade Commission of reaching out to all the Commissioners regardless of their perspectives, seeking their thoughts and offering mine on the problems facing the ICC. To the extent possible, I will also offer my good offices to help bridge any existing gaps between particular Commissioners. It is so unmistakably in the public interest that the Commissioners pull together that I am confident that good sense and goodwill will prevail with continuing encouragement from within and outside the ICC. I will do all in my power to facilitate this process, with the recognition that if it does succeed it will only be because of the hard work of all the Commissioners.

Question. Do you believe the Commission should have open meetings?

Answer. Yes; I believe that Congress and the public are entitled to a better understanding of how and why decisions are reached at the ICC, and open meetings can contribute greatly to achieving this goal. Moreover, it is my hope and belief that bringing the Commissioners together to discuss the most important issues at the agency will also help them understand and appreciate one another better. Staff should also receive a morale boost by being able to observe the attention paid to issues they have been working upon. For all these reasons, it is my intention to utilize frequently the most recently adopted ICC procedures enabling in effect a single Commissioner to convene an open meeting on any issue he or she believes to be of great import.

Question. Do you believe all the Commissioners should have the same access to the agency's staff as the Chairman?

Answer. Yes; if we are all to function properly as a collegial body it is imperative we have equal access to the staff for receiving information, views, the results of special studies we may request, and other purposes. Any other system would fundamentally violate the principle of collegial decisionmaking at the Commission. One cannot reach as sound a conclusion as would otherwise be possible in the absence of this kind of access. Moreover, if this kind of access were not available it would also

jeopardize the existence of that healthy diversity of informed points of view so necessary to arriving at sound results.

Of course, I recognize that the Chairman has certain administrative responsibilities and is entitled to the respect that goes with his position as "first among equals" (as the Chairman as well as a member), and I shall always accord him his due. I have told Chairman Taylor that I will seek to comply with all reasonable requests from him regarding administrative procedures that help the ICC to function most efficiently within a collegial framework. Chairman Taylor has graciously assured me that all requests for staff access and help or other assistance will be met. I am aware that there have been differences over this matter in the past, but I do not intend to relive or refight the past. It is my fervent hope that the Commission will be making a fresh start based upon mutual goodwill and good faith efforts to move together toward the common goal of upholding the ICC's duties in the public interest. Although brief, my talks to date with all the sitting Commissioners have encouraged me in this hope.

Question. Do you believe all the Commissioners should have a say about the ICC's agenda?

Answer. Yes; any system where all can vote but not all have an equal say in setting the agenda is not collegial. I believe that one of the very important matters, if not the most important, that Commissioners should be discussing in the open meetings mentioned in question #2(b) above involves precisely the determination of the ICC's agenda. The entire Commission ought to be constantly asking where the ICC is going, whether that is the best place to go, and what the best pace is. Of course, the Chairman's Office, by virtue of its administrative functions, will be aware of a number of matters that need to be considered for inclusion on that agenda. I will pay very close attention to Chairman Taylor's views on the ICC's agenda, particularly when he is speaking from his administrative perspective, in my deliberations. The ultimate decision then as to what items are to be officially placed on the ICC agenda, and the relative priorities to be given to them, is properly the responsibility of the Commission as a whole. The Chairman's special role in my view is to be responsible in the first instance for implementing the policies and priorities that have been set by the full Commission.

Question. When a member of the Commission is invited to testify before Congress, what views should that member present—the Commission's or his or her own views?

Answer. It seems to me that unless a Committee or Committee member specifically requests only the individual views of a member of the ICC, then that member has an obligation if appearing as the sole Commission representative to do his or her best to present the views of the Commission as a whole. When there is no Commission position as such, I think there is a responsibility to try to fairly portray the full range of views at the Commission. If the individual representative has very different views from the Commission position, I see nothing wrong with—indeed, I would encourage—presenting those alternative views in context, provided that they are clearly delineated as such and presented fairly so as not to take advantage of the situation. If an individual representative (or even a group of representatives) thinks upon reflection that he or she will not be able to do justice to opposing views, then I think that individual ought to request the presence of another member who can give the position its due as a service both to the Committee (so that it gets the benefit of a better exposition) and to the member(s) who hold those views.

As for myself, I know I can count on adequate advance notice of all Congressional hearings where the ICC has been asked to send any of its members to testify. Accordingly, I plan to attend all such hearings—as a witness or as part of the audience if not invited to participate—because I believe I can learn much about the will of Congress by listening closely whether or not I am asked to speak.

The CHAIRMAN. Where is Carl? We have one more witness.

Mr. LEMA. Mr. Chairman, Carl was unavoidably detained and he sent me to replace him.

The CHAIRMAN. Very well. Mr. Lema, I do apologize. I had Carl on my list and it just slipped my mind that he was going to testify. By all means, the National Coal Association has a very direct interest in this. Please accept my apologies for almost overlooking you, though I see you are hard to overlook.

Mr. LEMA. Thank you, Mr. Chairman.

The CHAIRMAN. Why do we not wait just a second until some of the crowd clears out and the noise stops.

[Pause.]

The CHAIRMAN. Now, go right ahead, Mr. Lema.

**STATEMENT OF JOSEPH E. LEMA, VICE PRESIDENT FOR
TRANSPORTATION, NATIONAL COAL ASSOCIATION**

Mr. LEMA. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, my name is Joseph E. Lema. I am vice president for transportation of the National Coal Association. NCA represents coal producers, coal sellers, and other organizations associated with the coal industry across the Nation.

My purpose in appearing before this committee today is to urge that you give special attention to certain factors in reaching a decision on whether each of the nominees now under consideration for the position of Interstate Commerce Commissioner should be confirmed. The ability of the Interstate Commerce Commission to administer the provisions of the Interstate Commerce Act, as amended by the 1980 Staggers Rail Act in a balanced, fair, and rational manner with regard to the needs both of rail carriers and of shippers and consumers must rely in the first instance on whether persons entrusted with such responsibilities—namely the Commissioners—have the understanding, intention and willingness to do so.

In deciding now whether to recommend that the full Senate confirm the present nominees, this committee holds the key to the future of the Commission and its ability to act soundly in fulfilling each of the goals set forth in the Nation's railroad transportation policy as declared in the Interstate Commerce Act.

These goals clearly call on the Commission, as provided in title 49, United States Code, section 10101a(6), "to maintain reasonable rates where there is an absence of effective competition." Frankly, the Commission as it is composed today is failing to meet this goal.

When the coal industry, after 2 years of intensive involvement in the legislative process, supported passage of the 1980 Staggers Rail Act, we never thought the Commission would fail to ensure that noncompetitive rail traffic would have timely, fair and equitable relief from monopolistic railroad rate abuses.

We have been relegated to the fate of a person invited to dinner and, following acceptance of the invitation, finding that at the end of a path to the dining hall laced with thorny cactus, we are served now with an empty plate. Surely, the Commission has handed shippers of noncompetitive rail traffic an empty plate when it comes to preventing monopolistic rail rate abuses.

The Commissioners are living in a fantasy world in which they play the railroads' Robin Hood, mistakenly thinking the railroads are poor, and adopting devices to extract monopoly prices from the shippers, who have no effective transportation alternatives, leading ultimately to higher consumer rates for electricity generated by burning the Nation's abundantly available energy resource—coal.

Mr. Chairman and members of the committee, we ask you to be fully convinced prior to recommending confirmation of each of the nominees that: first, the nominee is not disposed toward seeking full deregulation of noncompetitive rail traffic directly by the

granting of exemptions from regulation for movements of commodities having no effective transportation alternatives to the railroads;

And second, that the nominee is not committed to and/or favorably inclined toward full deregulation of noncompetitive rail traffic indirectly, in a de facto manner, by the adoption of regulatory standards and criteria which make it impossible to gain standing before the Commission to argue against monopolistic rail rates or to secure fair and equitable relief from monopolistic rail rate abuses, because such standards and criteria simply maximize railroad revenues to the exclusion—I repeat, to the exclusion—of rational measures for maintaining reasonable rate levels.

Mr. Chairman, this concludes my testimony. I will be glad to respond to questions from members of the committee.

The CHAIRMAN. Wendell.

Senator FORD. I have no questions.

The CHAIRMAN. Mr. Lema did you get to hear the witnesses?

Mr. LEMA. I did, sir.

The CHAIRMAN. What do you think? Do they meet your standards?

Mr. LEMA. Sir, I am very impressed with the interrogation of each nominee by this committee. I have no opinion as to each of those because I do not think it would be appropriate for me to offer one.

The CHAIRMAN. No; I do not think it would either.

They all stand behind the national transportation policy and will administer it four-square, and they are in favor of enforcement of the Staggers Act as intended by Congress. Now, does that give you some idea about their views about monopolistic practices and non-competitive routes, things like that?

Mr. LEMA. Mr. Chairman, frankly, I am a little worried yet, and that is because section 10101a does in fact provide 15 stated policy goals within the national railroad transportation policy, and a lot of them have to do with whether carriers have adequate revenues. Certainly the coal industry wants rail carriers to be private sector businesses, to be financially healthy, but not to extract monopoly prices from captive shippers.

As I noted in my testimony, there are other provisions in those goals that say, railroads must not extract monopoly rents, and I am paraphrasing now. So we think that the Commission as it is now constituted has failed, has failed almost entirely, since the passage of the 1980 Staggers Rail Act to balance the need for railroad revenues to be adequate and for captive shippers not to be abused.

The CHAIRMAN. Take a guess now. Do you think that the Commission has acted within the discretion given them in the Staggers Act, and upon appeal to courts that they will lose or win?

Mr. LEMA. We think that the Commission has acted beyond the discretion which the law gives it. We think it has done so by ignoring certain of the major goals of the national transportation policy as it relates to captive shipper protection, and emphasizing almost solely the railroad revenue needs.

Shippers, and we are a party at the National Coal Association to some of this litigation, have not succeeded in getting the U.S. Supreme Court to hear the issue of rail market dominance.

We did succeed initially in the U.S. Court of Appeals for the Fifth Circuit, by a 2-to-1 vote of a three-judge panel, to have the market dominance ruling under *Ex Parte 320* sub 2 referred back to the Commission. The entire court, the fifth circuit, en banc, overturned that decision. However, the Supreme Court did not act on the merits. It simply said it had no desire to look into that matter.

The CHAIRMAN. In my experience in dealing with both Commissions and with industries regulated under them, the Commission and the industries can go as far as they want until the public starts to complain, and when the public starts to complain by and large Congress listens. The grassroots do have an effect.

That is why I commented earlier that I have had almost no complaints on trucks, even from small towns; that most of the small towns seem to say they have a little more variety of service than they used to have and they do not complain. On airlines, with the exception of three or four small towns in Oregon that were boarding one or two passengers a day, which you could not serve with a Piper Cub and make a profit on, most of the Oregon towns now have more service than they had before, smaller planes and more service. Apart from the towns that have lost their big planes—and it is a sense of pride, I think, that they have lost them—there are not many complaints.

But I am starting to get more and more complaints about railroads, and I can sense it when I speak to the Rotaries, or when I go to the chambers of commerce. All I can say is I do not know if it is a lack of public relations on the railroads' part or whether there are some genuine complaints, of which half are justified and half are not.

But there is a growing sentiment somehow that there is an unfairness about it. That is the only way I can put it. My hunch is if that continues Congress will act. Congress will act whether or not the Commission acts.

But that is just a word of warning to those who represent the railroads in the audience. I can just feel it coming, and if it is true in other States that is something they had either better take care of quickly themselves or there will be a reaction, and often the reaction is infinitely greater and broader than it needs to be. When Congress paints, it starts to paint with an extremely broad brush.

Wendell.

Senator FORD. Mr. Chairman, the only thing I can say is that I am glad that you got the feeling.

The CHAIRMAN. Mr. Lema, thank you again. And I apologize for almost closing the hearing without you.

We will keep the record open for additional questions, although there is a markup scheduled on Wednesday for this and some other matters.

[Whereupon, at 11:50 a.m., the committee was adjourned, to reconvene upon the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. DAVID L. BOREN, U.S. SENATOR FROM OKLAHOMA

Mr. Chairman and members of the Committee, I am sorry that I cannot be present in person to present my good personal friend J. J. Simmons III to the members of the Commerce Committee. I was privileged to do so on a previous occasion.

Mr. Simmons has been nominated to fill a Democratic vacancy on the Interstate Commerce Commission. I enthusiastically support his nomination.

His distinguished background is well known to the committee. He has previously served as administrator of the Oil Import Administration, deputy director of the Office of Oil and Gas of the Department of the Interior, and undersecretary of the Interior as well as a brief term as a commissioner of the I.C.C.

In addition to his government service, he has served with ability in the private sector and rose to the position of vice-president of the Amerada Hess Corporation.

I am proud to say that Jake Simmons is from my home state of Oklahoma. The friendship between our two families spans three generations. He is being appointed to a Democratic position on the Commission. His party credentials are excellent. He has been registered as a Democratic voter in Oklahoma for almost 40 years. He was himself a Democratic candidate for state office in Oklahoma. His father was known as a statewide leader in our party for many years. Both Jake, who served as Muskege County NAACP president, and his father, who was state president of that organization for a quarter of a century, have been pioneer leaders for civil rights in our state. His brother Don is a respected leader in our state, and served on my Judicial Nominating Commission.

While Mr. Simmons holds solid credentials as a Democrat and is well qualified to serve in a Democratic seat on the Commission, he is above all a good American who would put the nation's interest above all else. He is a person of balanced and good judgment. He is fair-minded and capable of objective decision-making.

By ability, temperament, and personal character, I believe that J. J. Simmons III is well qualified to serve on the I.C.C. I recommend him to my colleagues without reservation.

STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY

Mr. Chairman, I appreciate the opportunity to let the Committee know of the outstanding credentials of Andrew John Strenio, Jr., who has been nominated to be a commissioner of the Interstate Commerce Commission.

Mr. Strenio brings to the Commission a keen analytic mind and a deep commitment to public policy. His record at the Woodrow Wilson School of Public and International Affairs at Princeton University was exemplary. Mr. Strenio was the Princeton student body president and a Rhodes Scholarship finalist. He graduated cum laude from Harvard Law School and simultaneously received a masters degree in public policy from Harvard's Kennedy School of Government. He has served as an economist and lawyer for the Council of Economic Advisers during the Carter Administration and for the Federal Trade Commission during the Reagan Administration.

Mr. Chairman, Mr. Strenio represents the type of appointment the Senate should encourage. The independent commissions were established to oversee diverse and complex segments of our economy: railroads, communications, airlines, electric utilities, natural gas pipelines. The responsibilities of these commissions demand commissioners who are able to comprehend the complexity of these industries but who are, at the same time, not captives of these industries. Commissioners must put the general good of the U.S. economy and American consumer above the special interests of the industries they oversee. I am convinced Mr. Strenio will be able to do just that.

Mr. Strenio has served both a Republican administration and a Democratic administration with distinction. He has demonstrated professionalism and a high degree of integrity in both assignments. I believe he will be an excellent member of

the Interstate Commerce Commission, and I hope the Committee will come to the same conclusion in promptly reporting this nomination.

STATEMENT OF CARL E. BAGGE, PRESIDENT, NATIONAL COAL ASSOCIATION

Mr. Chairman and Members of the Committee, my name is Carl E. Bagge. I am president of the National Coal Association. NCA represents coal producers, coal sellers, and other organizations associated with the coal industry across the Nation.

Coal is by far the leading commodity carried by the railroads, representing more than two of every five tons of total railroad freight originated by all Class I railroads. Therefore, we are major stakeholders in how the Interstate Commerce Commission administers the Interstate Commerce Act; and frankly we are extremely displeased with the Commission's performance. We believe some measure of correction is possible by improving the composition of the Commission through new appointments, a matter now before you.

Mr. Chairman and Members of the Committee, it's time to stop the Commission's fantasy in which it seems to be cast as the railroads' "Robin Hood". Rail carriers are not poor. They enjoy adequate revenues and good financial health as judged by business in general. Further, both shippers and consumers who ultimately must pay for monopolistic rates charged by market dominant rail carriers, need relief from high rail rates through Commissioners who are able and willing to balance carrier and shipper needs fairly and equitably. This Committee can furnish leadership toward such a goal through a critical examination of new nominees for vacant seats on the Commission. That's why I am appearing before you.

I ask that this Committee give two critical factors from the perspective of rail shippers, special attention before recommending Senate confirmation of any nominee for Commissioner. First, I suggest that the Committee require that each nominee show a thorough level of understanding with regard to provisions of the Interstate Commerce Act, as amended by the 1980 Staggers Rail Act, which are intended to avert monopolistic abuses of shippers in the absence of effective competition for freight movements.

Then I believe, in view of the intense dissatisfaction regarding the Commission's failure to administer the Act in a manner that is properly sensitive to the monopolistic plight of non-competitive rail traffic, this Committee must seek other equally important information from each nominee, namely: (1) Does the nominee have a disposition toward securing full and complete deregulation of non-competitive rail traffic directly by granting exemptions from regulation for certain traffic? and (2) Is the nominee committed to, and/or favorably disposed toward, full and complete deregulation of non-competitive rail traffic indirectly and in a de facto manner, through adoption of regulatory standards and criteria which make it impossible for shippers to secure timely and fair and equitable relief from rate and service abuses at the hands of monopolistic rail carriers? If either question is answered affirmatively, this should be due cause for rejection of the nominee.

A notice that such precautions are warranted may be found in Senate Joint Resolution 331 introduced on June 28, 1984 by the Chairman of the Surface Transportation Subcommittee, joined by seven co-sponsors including four on this Committee. When introducing the joint resolution now before this Committee, the sponsor, Senator Danforth, noted that the joint resolution gives a clear signal to the ICC and others that Congress expects all of the goals of the 1980 Staggers Rail Act to be met, and goes directly to the ICC's implementation of the Act. I commend Senator Danforth and the co-sponsors of the joint resolution for bringing to the forefront some serious problems encountered by coal shippers, caused by significant decisions of the Commission in several areas, including standards and criteria for determining railroad revenue adequacy, effective competition, and reasonableness of rates for coal traffic. Such actions, coupled with the Commission's unconscionable decision to exempt from regulation rail movements of export coal traffic frequently having no effective alternative to a single rail carrier for inland transportation from mines to ports, underscore the urgent need for immediate changes at the Commission.

A sound start in accomplishing vital changes at the Commission is to fill vacancies with persons who understand and accept all of the goals of the Interstate Commerce Act, as amended by the Staggers Act, and are committed to work toward meeting each of the goals, with particular emphasis on those which avert monopolistic abuses involving non-competitive rail traffic. This I urge you to weigh heavily as you hear present nominees and decide on whether a nominee should be confirmed to fill a vacancy on the Commission. Of parallel importance is a forthright rejection of any person who fails to demonstrate convincingly that as a Commissioner the

nominee has the ability and commitment to function in the position in a manner which is responsive to all of the goals of the Act, meeting the needs of both rail carriers and shippers.

For instance, a singularly grievous mystery to coal shippers is the Commission's unwillingness to implement fully the critical Long-Cannon Amendment embodied now in the Interstate Commerce Act (49 U.S.C. 10707a(e)(2)(A)(B)(C)) as amended by the 1980 Staggers Rail Act. The Long-Cannon Amendment's provisions call on the Commission: To minimize non-compensatory traffic; to maximize revenues from traffic that contributes only marginally to fixed costs; to consider the impact of proposed rates or rate increases on attainment of national energy goals; and to determine whether one commodity is paying an unreasonable share of the carrier's revenues.

Yes, the Commission has never acceded to shipper requests for comprehensive implementation of the Long-Cannon Amendment. Certainly, the Commission should see how these objectives would fare in relationship to its proposed coal rate guidelines. These guidelines would encourage drastic increases in rail rates for coal traffic, notwithstanding high revenues already contributed to the railroads by coal movements which are handled at low costs due to inherent efficiencies in the loading and unloading of coal and to the economies of scale associated with utilization of coal unit trains and complete trainload shipments. Clearly, to be sensitive to the reasonableness of railroad coal rates and to their impact on consumer prices of electricity that is generated by coal delivered to utility plants by railroad, the Commission should reconsider its proposed coal rate guidelines, which we find not to be in compliance with the law nor in conformance with the intent of Congress as expressed in the Long-Cannon Amendment, and elsewhere in the Act.

Mr. Chairman, I warmly appreciate this opportunity to appear before the Committee. I will be glad to answer any questions now and in writing following this hearing.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, August 2, 1984.

Hon. BOB PACKWOOD,
U.S. Senate, Washington, DC.

DEAR BOB: I applaud the President's effort to bring the Interstate Commerce Commission up to full strength, and I cannot imagine a stronger candidate than Andrew J. Strenio of Maryland. I regret that I am unable to appear in person to advocate his cause.

Mr. Strenio has built a solid record of achievement over the years, and I know he will make a valuable contribution to the Commission. I urge his swift approval by the Commerce Committee and early confirmation by the Senate.

With best wishes,
Sincerely,

CHARLES MCC. MATHIAS, Jr., U.S. Senator.

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC, August 3, 1984.

Senator BOB PACKWOOD,
Chairman, Senate Commerce Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I would like to take this opportunity to inform you of my support for the nomination of Mr. Andrew Strenio, Jr. for a seat on the Interstate Commerce Commission. I urge the Committee to act as expeditiously as possible on his confirmation.

Mr. Strenio, a native of Erie, PA, is an individual of the highest caliber. A graduate of Princeton and Harvard, his academic credentials are beyond reproach. An Assistant Director of the FTC, and a former Staff Economist with the President's Council of Economic Advisers, his government experience is valuable and varied. Having reviewed Mr. Strenio's qualifications and background, I am certain that he will perform his duties at the ICC with grace and a high level of competence.

If you have any questions regarding Mr. Strenio's suitability for the ICC post, please do not hesitate to contact me. I look forward to learning the outcome of your deliberations. Thank you.

Sincerely,

JOHN HEINZ, *U.S. Senator.*

THE WESTERN COAL TRAFFIC LEAGUE,
Washington, DC, August 3, 1984.

HON. ROBERT PACKWOOD,
Chairman, Senate Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR CHAIRMAN PACKWOOD: On August 6th, the Commerce Committee will examine the qualifications of Messrs. J.J. Simmons, Andrew Strenio and Paul Lamboley, nominees for seats on the Interstate Commerce Commission. On behalf of the Western Coal Traffic League and the millions of electricity consumers served by its members, I strongly urge you and the members of the Committee to use the hearing and the confirmation process to bring some balance to the Commission's implementation of the Interstate Commerce Act.

When Congress passed the Staggers Act in 1980, it had two basic goals: reduce regulation where competitive market forces could be counted on to keep rates and practices reasonable; and maintain effective regulatory protections for those shippers—particularly coal receivers—who were without meaningful alternatives to rail transportation. In the four years since the Staggers Act was signed into law, however, the ICC as presently constituted has been wholly unresponsive to the needs of captive shippers and the consumers they serve.

It is imperative that the Committee ensure that before any nominee's confirmation is recommended to the Senate, that nominee demonstrate an equal commitment to both of the Staggers Act's goals. In particular, each nominee must show a true understanding of the captive shipper protection built into Act, and a genuine commitment to their enforcement.

Finally, it is incumbent upon the Committee to ensure that all nominees recommended for confirmation evince a fair and impartial approach to the legal, factual and policy questions faced by the ICC in individual cases. Any nominee who demonstrates a pre-disposition toward deregulation for deregulation's sake, or a bias in favor of regulatory standards which deter or encumber the free exercise of a shipper's right to seek relief from market dominant rail rates and practices, should be rejected.

On behalf of the Western Coal Traffic League and its members, I appreciate your consideration of our views and ask that this letter be included in the official record of the August 6 confirmation hearing.

Respectfully yours,

JOSEPH H. SHAFER, Jr., *President.*